NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

CIS

Congressional Information Service, Inc.
Washington, D.C.

S. Hrg. 99-1059

"OPTIONS FOR CONDUCTING A PAY EQUITY STUDY OF FEDERAL PAY AND CLASSIFICATION SYSTEMS"—REPORT OF THE GENERAL ACCOUNTING OFFICE

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE, AND GENERAL SERVICES

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

MAY 22, 23, AND JULY 24, 25, 1985

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE
68-068 WASHINGTON : 1987

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S401-29

68-068 O - 87 - 1

COMMITTEE ON GOVERNMENTAL AFFAIRS

WILLIAM V. ROTH, Jr., Delaware, *Chairman*

TED STEVENS, Alaska	THOMAS F. EAGLETON, Missouri
CHARLES McC. MATHIAS, Jr., Maryland	LAWTON CHILES, Florida
WILLIAM S. COHEN, Maine	SAM NUNN, Georgia
DAVE DURENBERGER, Minnesota	JOHN GLENN, Ohio
WARREN B. RUDMAN, New Hampshire	CARL LEVIN, Michigan
THAD COCHRAN, Mississippi	ALBERT GORE, Jr., Tennessee

John M. Duncan, *Staff Director*
Margaret P. Crenshaw, *Minority Staff Director*

Subcommittee on Civil Service, Post Office, and General Services

TED STEVENS, Alaska, *Chairman*

CHARLES McC. MATHIAS, Jr., Maryland	ALBERT GORE, Jr., Tennessee
DAVE DURENBERGER, Minnesota	CARL LEVIN, Michigan

Wayne A. Schley, *Staff Director*
Thurgood Marshall, Jr., *Minority Staff Director and Counsel*
Pat Phillips, *Chief Clerk*

CONTENTS

Page

Opening statements:
  Senator Stevens 1, 223
  Senator Eagleton 2
  Senator Gore 116

WITNESSES

WEDNESDAY, MAY 22, 1985

Hon. Alan Cranston, U.S. Senator from the State of California 3
Hon. Daniel J. Evans, U.S. Senator from the State of Washington 10
Hon. Mary Rose Oakar, U.S. Representative from the State of Ohio 21
William J. Anderson, Director, General Government Division, General Accounting Office, accompanied by Curtis W. Copeland, Evaluator in Charge of the Pay Equity Study and Lynn H. Gibson, attorney, Office of the General Counsel 25
Virginia B. Lamp, labor relations attorney, U.S. Chamber, accompanied by Mark A. De Bernardo, manager of labor law 59

THURSDAY, MAY 23, 1985

Loretta Cornelius, Acting Director, Office of Personnel Management, accompanied by Richard Post, Associate Director for Staffing, and Joseph Howe, Assistant Director, Office of Standards Development 113
Morris B. Abram, Vice Chairman, U.S. Commission on Civil Rights, accompanied by June O'Neill, economist, consultant to the Commission 134
Heidi, L. Hartmann, Ph.D., economist, Washington, DC 159
Solomon W. Polachek, Department of Economics, State University of New York, Binghamton, NY 191

WEDNESDAY, JULY 24, 1985

Robert M. Isaac, Mayor, Colorado Springs, CO 224
Frank C. Morris, Jr., attorney, Epstein, Becker, Borsody and Green, P.C., representing the National Legal Center for Public Interest 239
Barbara B. Hutchinson, director, Women's Department, American Federation of Government Employees, AFL-CIO; Tricia Thomas, legislative director, National Federation of Federal Employees; and Paul Newton, director of legislation, National Treasury Employees Union 286
Sally Douglas, manager of legislative research, National Federation of Independent Business; and Sharon Spigelmyer, director, human resources and equal opportunity, National Association of Manufacturers 322

THURSDAY, JULY 25, 1985

Lawrence Z. Lorber, attorney, Breed, Abbot & Morgan, representing the American Society for Personnel Administration, accompanied by Ronald Pilenzo, president, ASPA 357
Marie Argana, national president, Federally Employed Women, accompanied by Chris deVries, legislative director; and Eileen Stein, chairperson, National Committee on Pay Equity; and Claudia Wayne, executive director 402
Phyllis Schlafly, president, Eagle Forum 441
Hon. James G. Martin, Governor of the State of North Carolina 471
Carin Clauss, University of Wisconsin Law School, Madison, WI 479

Alphabetical List of Witnesses

Page
Abram, Morris B.:
    Testimony 134
    Prepared statement 143
Anderson, William J.:
    Testimony 25
    Prepared statement, with attachments 37
Argana, Marie:
    Testimony 402
    Prepared statement, with an attachment 409
deVries, Chris: Testimony 402
Clauss, Carin: Testimony 479
Copeland, Curtis W.: Testimony 25
Cornelius, Loretta:
    Testimony 113
    Prepared statement 124
Cranston, Hon. Alan:
    Testimony 3
    Prepared statement 7
De Bernardo, Mark A.: Testimony 59
Douglas, Sally:
    Testimony 322
    Prepared statement 329
Evans, Hon. Daniel J.:
    Testimony 10
    Prepared statement, with an attachment 12
Gibson, Lynn H.: Testimony 25
Hartmann, Heidi L., Ph.D.:
    Testimony 159
    Prepared statement 171
Howe, Joseph: Testimony 113
Hutchinson, Barbara B.:
    Testimony 286
    Prepared statement 293
Isaac, Robert M.:
    Testimony 224
    Prepared statement, with attachments 231
Lamp, Virginia B.:
    Testimony 59
    Prepared statement, with attachments 72
    Response to a written question 108
Lorber, Lawrence A.:
    Testimony 357
    Prepared statement, with attachments 362
Martin, James G.:
    Testimony 471
    Prepared statement 476
Morris, Frank C., Jr.:
    Testimony 239
    Prepared statement 248
Newton, Paul:
    Testimony 286
    Prepared statement of Robert M. Tobias, National President, NTEU 315
Oakar, Hon. Mary Rose:
    Testimony 21
    Prepared statement 23
O'Neill, June: Testimony 134
Pilanzo, Ronald: Testimony 357
Polachek, Solomon W.:
    Testimony 191
    Attachments to statement 202
Post, Richard: Testimony 113
Schlafly, Phyllis:
    Testimony 441
    Prepared statement, with attachments 452
Spigelmyer, Sharon:
    Testimony 322

Spigelmyer, Sharon—Continued Page
Prepared statement 339
Stein, Eileen:
Testimony 402
Prepared statement, with attachments 419
Thomas, Tricia:
Testimony 286
Prepared statement 299
Wayne, Claudia: Testimony 402

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Statement of Hon. Patricia Schroeder, U.S. Representative from the State of Colorado 17
Statement of Hon. Jesse Helms, U.S. Senator from the State of North Carolina 471
Statements of:
American Retail Federation 491
American Farm Bureau Federation 504
Associated General Contractors of America 507
American Nurses' Association 512
National Association of Government Employees 528
Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems, a report by the Comptroller General of the United States 534
Perspectives on Comparable Worth, by the National Legal Center for the Public Interest 638

"OPTIONS FOR CONDUCTING A PAY EQUITY STUDY OF FEDERAL PAY AND CLASSIFICATION SYSTEMS"—REPORT OF THE GENERAL ACCOUNTING OFFICE

WEDNESDAY, MAY 22, 1985

U.S. SENATE,
SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE, AND GENERAL SERVICES,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The subcommittee met at 10 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ted Stevens (chairman of the subcommittee) presiding.

Present: Senators Stevens and Eagleton.

Staff present: Wayne A. Schley, staff director; Jeffrey D. Landry, assistant counsel; Pat Phillips, chief clerk; Thurgood Marshall, Jr., minority staff director and counsel; and Merry Halamandaris, professional staff member.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Good morning. Today and tomorrow our subcommittee will hold the first two of a number of hearings on the subject of pay equity in the Federal pay system.

We have asked our witnesses to assist us in focusing on a General Accounting Office report entitled "Options for Conducting a Pay Equity Study of the Federal Pay and Classification System." First of all, I want to thank the GAO for completing this clearly written and thorough report in a timely fashion.

Few would argue, I believe, that there is not a wage gap between men and women in the Federal Government. For example, the Census Bureau reported in 1980 that the average earnings of year-round full-time females in the Federal Government were approximately 63 percent of the earnings of men in the Federal Government. The goal of these hearings is to help us understand why this gap exists and if or how it can be narrowed.

Presumably, if a pay equity study reveals that dissimilar occupations are of comparable worth to the Federal Government, but are paid unequally, then the lower paying jobs would receive pay equity adjustments. We need to know what that cost would be to the taxpayer and what, in these days when we are focusing on the total cost of Government, such cost would mean to current Federal employees. I know that the basic subject of the hearing, comparable worth, is not only an emotional one but one that could have a far-reaching effect not only on Federal employees but on the private sector as well. Therefore, we want to assure all concerned that the hearings will be fair and impartial.

The subcommittee looks forward in this and subsequent hearings to a thorough discussion of the GAO report detailing various approaches for carrying out a pay equity study of the Federal pay system.

This morning our first witness is Senator Cranston. First I want to yield to Senator Eagleton for his opening statement.

OPENING STATEMENT OF SENATOR EAGLETON

Senator EAGLETON. Thank you, Mr. Chairman. I do have a 3-minute opening statement that I will move through expeditiously. I am delighted that Senator Cranston is with us.

I am extremely pleased to be here to discuss the report which the General Accounting Office has provided the Congress outlining the options on methods to use in conducting a pay equity study at the Federal level. I joined with several of my colleagues—Senators Cranston and Evans, and Congresswomen Oakar and Schroeder—in asking the GAO to carry out this study after the Senate last October tabled Senator Cranston's amendment to the continuing resolution which would have mandated a pay equity study of the Federal work force. Congresswoman Oakar's bill mandating a similar study had already passed the House by an overwhelming vote of 413 to 6.

The comprehensive Federal pay equity study is needed in order to find out why female Federal employees in both the General Schedule and Federal Wage Schedule are concentrated in a few occupational series at the lower grade and pay levels. Fifty-five percent of all women employed by the Federal Government are concentrated in 8 percent of the occupations contained in those series. Furthermore, women working for the Federal Government continue to earn less than men, earning only 62.7 percent in comparison to their male counterparts, despite the passage of the Equal Pay Act of 1963 and the Civil Rights Act of 1964, which attempted to end wage discrimination against women.

While some suggest that the wage gap is due to market forces or that women choose low-paying jobs in order to have greater flexibility for entry and exit from the work force, others believe that the wage gap exists because women do not receive comparable worth for their jobs.

The Federal Government, as the Nation's largest employer, has a responsibility to review our Federal pay and classification systems in order to identify the unexplained differences between male and female earning levels and to make sure that its employment policies are free from bias. Already 16 States are reevaluating their job classification systems in an effort to correct unfair pay schedules, and more than 100 municipalities have begun similar studies. The Federal Government can no longer drag its feet by failing to initiate a study of the Federal job classification and compensation system.

Critics of the Federal employee pay equity study contend that such a study will be too costly, that it will be harmful to the Government as an employer, lead to fewer jobs, and result in numerous discrimination cases against the Government. These are not the issues. If women's occupations require the same working conditions and the same level of skill, effort, and responsibility as jobs held by men, then women's pay should be substantially equal.

As the Nation's largest employer, we must conduct a study of comparable worth at the Federal level, review the results of the study to see if we are discriminating against our female employees, and then implement recommendations to end any such discrimination. GAO has provided us with a blueprint for conducting a Federal pay equity study, and I am hopeful the two methods which they suggest—a job content analysis and an economic analysis—will quell some of the criticisms of the Federal pay equity study.

Mr. Chairman, it is my understanding that for the next 2 days we will hear from congressional witnesses, GAO, and opponents of the Federal pay equity study. I look forward to more hearings in the near future when we will have an opportunity to hear from the proponents of the comparable-worth concept, including the one before us today, Senator Cranston.

Thank you, Mr. Chairman.

Senator **Stevens**. Thank you.

I think we should all realize these hearings are a result of an agreement that Senator Cranston and I reached last year, specifically on October 10. It is in the Congressional Record on page S14003.

There were four basic items that we agreed upon. We agreed to join together with the Chairman of the House Post Office and Civil Service Committee, Mr. Ford, and with the subcommittee Chairwoman, Ms. Oakar, in a letter to the GAO to request the study that has been delivered to us.

We agreed that no later than the week after the Easter recess we would convene hearings. This is the first available time we could hold a hearing after the recess, unfortunately, Senator. We didn't quite fully meet that agreement.

Third, we agreed that we would consult with Senator Cranston and Senator Evans in an effort to develop legislation to facilitate carrying out the study, unless a decision had been reached that GAO itself should carry out the study. I think we have kept that part of the agreement.

And fourth, I had given the Senator from California my personal assurance that I would do my best to provide an opportunity this year for an appropriate vehicle to have a vote on the merits of the issue.

We are proceeding with that agreement, and we are happy to greet the Senator from California this morning.

TESTIMONY OF HON. ALAN CRANSTON, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator **Cranston**. Thank you very much, Mr. Chairman and Senator Eagleton.

I am pleased to be here today to submit testimony regarding the report of the Comptroller General of the United States entitled "Options for Conducting a Pay Equity Study of the Federal Pay and Classification System."

I am also pleased to be testifying here today with Senator Evans, who will follow me, who has been a national leader in efforts to identify and eliminate sex-based wage discrimination. I have worked closely with him in developing S. 519, which, as I will discuss in a moment, provides an excellent vehicle for incorporating the recommendations contained in the GAO report which is the focus of today's hearing.

As you indicated, Mr. Chairman, this report grew out of an agreement which was reached last fall between the two of us, along with the distinguished Senator from Washington, Mr. Evans, and various Members of the House of Representatives to request the Comptroller General to provide an analysis of the advantages and disadvantages of various methodologies that could be used to study the pay equity issue at the Federal level.

I deeply appreciate the chairman's cooperation and support in working out an acceptable approach to dealing with this issue and the constructive part Senator Eagleton has played in this. I am pleased, too, to hear further hearings will be scheduled by the subcommittee so that others concerned with this issue, particularly organizations representing Federal workers, women's organizations, and proponents of pay equity will have an opportunity to testify.

Senator STEVENS. Let me interrupt you, if I may. There have been comments about these hearings. The first 2 days are equally balanced in terms of the various parties involved. We will continue the hearings later. I hope that it will be understood those hearings later will be equally balanced also.

Senator CRANSTON. Fine.

I think it is very important that the testimony from the first 2 days be balanced appropriately, and I am confident we will have balanced hearings.

Before commenting on the report itself, there are several points I wish to make about the underlying issue—a study of wage-setting practices in the Federal work force to ascertain whether sex-based wage discrimination exists.

First, as the GAO report indicates, there is no question that a gap does exist between the average wages earned by men and by women who work for the Federal Government.

What is not clear, according to GAO, is why this wage gap exists and whether discrimination plays a part in creating it.

The purpose of conducting a study of the Federal work force wage-setting practices is to find out answers to those questions.

Second, the concept of a pay equity study of the way that wages are set in the Federal work force is not a wild or radical idea. Indeed, hundreds of public employers—as well as a number of private employers—have already undertaken such studies or are in the process of undertaking them. Still others have begun actually implementing pay equity wage adjustments to correct problems that they have identified.

I am proud to say that two major cities in my own State of California—Los Angeles and San Francisco—have just taken action to begin implementing pay equity wage adjustment plans.

The question is whether the Federal Government should voluntarily examine its own wage-setting practices regarding Federal employees to determine if those practices are marred by sex-based wage discrimination.

I think the answer is clear. The Federal Government should move forward in this area with a carefully designed study that will take into account all of the concerns which have been expressed—including the concerns of those who believe that sex discrimination is not a factor in explaining the wage gap—so that we can then make intelligent and reasoned decisions about what problems can and should be addressed.

In this regard, the GAO report provides a blueprint to help delineate the questions which must be resolved in actually designing a pay equity study for the Federal work force. There are two suggestion in this report that I want to highlight.

First, the report suggests that both an economic analysis and a job content approach be included in the Federal pay equity study. The reasons for this suggestion are discussed in detail in the report.

This approach has, I believe, the potential to diffuse much of the confusion and misinformation that has been used by opponents of the pay equity concept to distort the issues. The study should reflect this dual approach.

Proponents of pay equity have always acknowledged the fact that some portion of the gap between the average wages of male and female workers can be explained by nondiscriminatory factors, including such variables as time in the work force, experience, education, and years of training. However, as the GAO report notes on page 15, studies of these variables have been shown to account for only up to one-half of the wage gap between men and women.

Combining an economic analysis with a job content analysis will make clear that the study which is being undertaken will examine all of the relevant factors which contribute to the gap in wages between men and women in the Federal work force. As the GAO report states on page 48:

> Use of both approaches can provide a clearer understanding of how Federal wages are set and would be less susceptible to charges that important explanatory variables have been ignored.

Second, the GAO report stresses the need to have the pay equity study carried out by an objective body. It suggests the establishment of a steering committee—composed of representatives from affected groups and experts from various fields—to direct the conduct of the study itself.

I strongly agree with that recommendation. S. 519 would establish an independent commission, very much along the lines suggested in the GAO report.

I note that the Director of OPM put out a press release when the GAO report was released indicating, in essence, that OPM could and would do the pay equity study suggested in the GAO report. Given the prior position of the Office of Personnel Management on the issue of pay equity, I am convinced that the use of an independent body is the best way—indeed, it may be the only way—to achieve an objective and credible pay equity study.

Let me stress the importance of credibility in this matter. It is not a question of whether or not the Federal Government's personnel agency is capable of carrying out an objective study. The question is whether or not the interested groups and the public have a basis for perceiving a bias on the part of OPM which they reasonably believe could skew the results of any study that agency produces.

I welcome the GAO's suggestion for an independent study directed by an independent entity and strongly urge the subcommittee to adopt this approach and, in doing so, to look carefully at the provisions of S. 519.

In conclusion, let me say that the GAO report has provided the Congress with a detailed analysis of the many issues that must be addressed in designing a pay equity study of the Federal work force and concrete suggestions on how best to move forward in this area to achieve an objective and credible study that can withstand the closest scrutiny. I am pleased with their work, and again congratulate them on it and its timeliness.

I look forward to working with you, Mr. Chairman, the members of the committee, the Senator from Washington, and others concerned with pay equity to develop a third day of hearings and then to perfect and pass the necessary legislation to provide for a pay equity study of the Federal Government's wage-setting practices.

Thank you very much.

Senator STEVENS. Thank you, Senator. I note that you skipped over some portions. We will print your statement in full in the record.

Senator CRANSTON. I appreciate that very much.

Senator STEVENS. I don't have any questions. I think you set forth the position that you have advocated very fairly.

Senator Eagleton, do you have any questions of our colleague?

Senator EAGLETON. No, thank you, Mr. Chairman.

Senator STEVENS. We do thank you, Senator, and look forward to working with you as we proceed.

Senator CRANSTON. I thank you both and the staff of the committee for your assistance and cooperation in this area.

Senator STEVENS. Has this new bill been referred to this committee? I have not seen it.

Senator CRANSTON. It has been; yes.

Senator STEVENS. It is in the jurisdiction of the Governmental Affairs Committee? What is it, S. 1169?

Senator CRANSTON. S. 519.

Senator STEVENS. No; you said it was introduced as a part of the 1985 Economic Equity Act.

Senator CRANSTON. That has been referred to the Finance Committee.

Senator STEVENS. So is the Finance Committee going to have jurisdiction over this subject?

Senator CRANSTON. They got the omnibus bill, but you have jurisdiction over this subject. The Economic Equity Act has 22 different provisions affecting many different subjects. Many of those are not in the purview of this committee, but the study plainly is, and many other aspects as well.

Senator **Stevens**. I didn't intend to have any questions, but do you intend to proceed with S. 519 as an independent vehicle?

Senator **Cranston**. Yes. Absolutely.

Senator **Stevens**. Thank you.

Senator **Cranston**. Thank you very much.

[Senator Cranston's prepared statement follows:]

PREPARED STATEMENT OF SENATOR ALAN CRANSTON

I am pleased to be here today and submit testimony regarding the report submitted by the Comptroller General of the United States, entitled "Options for conducting a Pay Equity Study of the Federal Pay and Classification System."

I am also pleased to be testifying here today with Senator Evans who has been a national leader in efforts to identify and eliminate sex-based wage discrimination. I have worked closely with him in developing S. 519, which, as I will discuss in a moment, provides an excellent vehicle for incorporating the recommendations contained in the G.A.O. report which is the focus of today's hearings.

HISTORY

On September 28, 1983, I introduced S. 1900, the first pay-equity legislation introduced in the Congress. That legislation included provisions calling for a pay-equity study of the federal workforce. I was therefore delighted when the House, through the efforts of Representative Oakar, did pass, by an overwhelming vote of 413 to 6, legislation requiring such a study. Unfortunately, my effort to have the Senate vote on this legislation last October in the form of a floor amendment to the Continuing Resolution was defeated on a procedural vote. Thereafter, however, we were able to forge the agreement to request the G.A.O. report that is the focus of today's hearing.

OVERVIEW

As the Chairman knows, this report grew out of an agreement which was reached last fall between us, the distinguished Senator from Washington (Mr. Evans), and various members of the House of Representatives to request the Comptroller General to provide an analysis of the advantages and disadvantages of various methodologies that could be used to study the pay-equity issue at the federal level. That agreement also provided that the Subcommittee would hold a hearing on the report submitted by the G.A.O. to be followed by legislative action, as necessary.

I deeply appreciate the Chairman's cooperation and support in working out an acceptable approach to dealing with this issue, and I have been advised that further hearings will be scheduled by the Subcommittee so that others concerned with this issue, particularly organizations representing federal workers, women's organizations, and proponents of pay equity such as former Secretary of Labor, Ray Marshall, will have an opportunity also to testify. I think it is very important that the testimony from the first two days be balanced appropriately and urge the Chairman to hold a third day of hearings promptly in order to provide a more comprehensive hearing record for the Committee's deliberations.

Before commenting on the report itself, there are several points I wish to make about the underlying issue—a study of wage-setting practices in the federl workforce to ascertain whether sex-based wage discrimination exists.

First, as the G.A.O. report indicates, there is no question that a gap does exist between the average wages earned by men and by women who work for the federal government. According to the data cited in the report, women employed by the federal government earned only 62.8 percent of the average earnings of males employed by the federal government. Those figures are based upon full time, year-round employment both in the case of male and female employees.

What is not clear, according to G.A.O., is why this wage gap exists and whether discrimination plays a part in creating it.

The purpose of conducting a study of the federal workforce wage-setting practices is to find out answers to those questions.

Second, the concept of a pay-equity study of the way that wages are set in the federal workforce is not a wild or radical idea. Indeed, hundreds of public employers—as well as a number of private employers—have already undertaken such studies or are in the process of undertaking them. Still others have begun actually implementing pay-equity wage adjustments to correct the problems that they have identified.

According to a report prepared by the Congressional Research Service on March 12 of this year, almost half of the States have completed studies or are in the process of studing their civil service systems for discriminatory pay practices in female-dominated classifications.

I am proud to say that two major cities in my own state of California—Los Angeles and San Francisco—have just taken action to begin implementing pay-equity wage adjustment plans.

The question is whether the federal government should voluntarily examine its own wage-setting practices regarding federal employees to determine if those practices are marred by sex-based wage discrimination.

I think the answer is clear. The federal government should move forward in this area with a carefully designed study that will take into account all of the concerns which have been expressed—including the concerns of those who believe that sex discrimination is not a factor in explaining the wage gap—so that we can then make intelligent and reasoned decisions about what problems can and should be addressed.

G.A.O. REPORT

In this regard, the G.A.O. report provides a blue print to help delineate the questions which must be resolved in actually designing a pay-equity study for the federal workforce. There are two suggestions in this report that I want to highlight.

Combining an Economic Analysis and a Job-Content Analysis: First, the report suggests that both an economic analysis and a job-content approach be included in the federal pay-equity study. The reasons for this suggestion are discussed in detail in the report. This approach has, I believe, the potential to diffuse much of the confusion and misinformation that has been used by opponents of the pay-equity concept to distort the issues. The bill should reflect this dual approach.

On Monday, a revised version of S. 519 was introduced as part of the 1985 Economic Equity Act, S. 1169. The bill was revised to require explicitly that both an economic analysis and a job content approach be included in the federal pay equity study.

Proponents of pay equity have always acknowledged the fact that some portion of the gap between the average wages of male and female workers can be explained by non-discriminatory factors, including such variables as time in the workforce, experience, education, and years of training. However, as the G.A.O. report notes on page 15, studies of these variables have been shown to account for only up to half of the wage gap between men and women.

Opponents of pay equity nonetheless frequently toss out wildly inflated figures allegedly based upon a calculation of the cost of closing the entire wage gap and argue that pay-equity proposals fail to take into account the 'differences' in male and female work patterns.

Combining an economic analysis with a job-content analysis will help dispel these arguments once and for all. It will make clear that the study which is being undertaken will examine all of the relevant factors which contribute to the gap in wages between men and women in the federal workforce. As the G.A.O. report states on page 48, "Use of both approaches can provide a clearer understanding of how federal wages are set and would be less susceptible to charges that important explanatory variables have been ignored."

Impartial Advisory Committee Needed: Second, the G.A.O. report stresses the need to have the pay-equity study carried out by an objective body. It suggests the establishment of a steering committee—composed of representatives from affected groups and experts from various fields—to direct the conduct of the study itself. The model suggested is a committee reporting directly to Congress and one which is given the authority to make policy decisions, to hire and direct the efforts of needed consultants, to coordinate with appropriate federal agencies, and to interpret study results and make recommendations.

I strongly agree with that recommendation. S. 519 would establish an independent Commission, very much along the lines suggested in the G.A.O. report.

I note that the Director of OPM put out a press release when the G.A.O. report was released indicating, in essence, that OPM could and would do the pay-equity study suggested in the G.A.O. report. Given the prior position of the Office of Personnel Management on the issue of pay equity, I am convinced that the use of an independent body is the best way—indeed, it may be the only way—to achieve an objective and credible pay-equity study.

Let me stress the importance of credibility in this matter. It is not a question of whether or not the Federal Government's personnel agency is capable of carrying out an objective study. The question is whether or not the interested groups and the public have a basis for perceiving a bias on the part of OPM which they reasonably believe could skew the results of any study that agency produces. This really is as much a matter of perception as anything else. Without impugning anyone's motives, I think it is fair to say that any report submitted by OPM would be attacked on the basis that it was not objective. General rejection of such a report on those grounds would result only in a lot of wasted time and money on all sides.

In this regard, I would note that the Senator from Washington and I have attempted twice to get OPM to share with us information on their in-house study. Those efforts have been totally unsuccessful to date, and a similar lack of cooperation was experienced by G.A.O. in its efforts to secure information on these activities. This lack of cooperation certainly has not created an atmosphere of trust and confidence.

I am reminded about an analogy I'd like to share with the Subcommittee. In 1979, as the Chairman of the Veteran's Affairs Committee, I introduced legislation to require a major epidemiological study of the effects of Agent Orange on Vietnam Veterans. My bill, as passed by the Senate, would have required the Department of Health and Human Services to conduct the study, not the veteran's Administration. But try as I might, I was unable to convince the Veteran's Affairs Committee in the House that a study conducted by the V.A. on this highly volatile issue would never be accepted as objective, either by veterans, the press, or the public. So the law as enacted directed the V.A. to conduct the study. After over three years of delay and legal challenges and lots of outpouring of emotion on all sides, everyone finally came around to the view that the V.A. shouldn't do the Agent Orange Study and it was then delegated to the Centers for Disease Control in HHS in January 1983.

Let's not allow the same kind of mistake to happen again on a major public policy study. Let's set it up properly and credibly from the start.

I welcome the G.A.O.'s suggestion for an independent study directed by an independent entity and strongly urge the Subcommittee to adopt this approach and, in doing so, to look carefully at the provisions of S. 519.

CONCLUSION

In conclusion, let me say that the G.A.O. report has provided the Congress with a detailed analysis of the many issues that must be addressed in designing a pay-equity study of the federal workforce and concrete suggestions on how best to move forward in this area to achieve an objective and credible study that can withstand the closest scrutiny. I am pleased with their work, and again congratulate them on it and its timeliness.

I look forward to working with you, Mr. Chairman, the members of the Committee, the Senator from Washington, and others concerned with pay equity to develop a third day of hearings and then to perfect and pass the necessary legislation to provide for a pay-equity study of the federal government's wage-setting practices.

Senator STEVENS. Our next witness is Senator Evans.

I might say we would be happy to invite Senator Cranston and Senator Evans to be with us during any part of these hearings. I know you have other duties, but I would be happy to have you join us at any time.

Senator CRANSTON. Thank you very much.

Senator EAGLETON. Mr. Chairman, I wish to welcome Senator Evans and the congressional witnesses that will testify later. I have another hearing. Staff will be here to cover the hearing.

I also pay tribute to you, Mr. Chairman, for holding these hearings and for the four-point plan, et cetera, that you earlier worked out with Senator Cranston. Thank you very much.

Senator STEVENS. Thank you, Senator.

Good morning, Senator. Happy to have you here with us today.

TESTIMONY OF HON. DANIEL J. EVANS, U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator **Evans**. Good morning, Mr. Chairman. I would ask that my full statement and its attachment be submitted for the record. I will only emphasize some portions of it.

Senator **Stevens**. Yes, I will be happy to do that, Senator.

Senator **Evans**. I have been deeply interested for many, many years in the issue represented by S. 519. As I think you are probably aware, I served as Governor of the State of Washington during a time when we pioneered in the initiation of pay equity studies. We came forth with a conclusion, and in my final budget, presented to the legislature shortly before leaving office, we had suggested the beginnings of a corrective measure that would have long ago brought Washington in full compliance with the proposals for pay equity. Unfortunately, my successor in office chose not to follow through, and we have been in court ever since. The first bill I introduced upon arriving in the Senate was the predecessor to S. 519 in the last session of Congress.

This Nation's progress in the area of equal employment opportunity has always been met with resistance. Historically, Congress has successfully eradicated obsolete and archaic notions in a step-by-step progression. It is against this historical backdrop that I find the argument by opponents—that comparable worth has nothing to do with the Equal Pay or Civil Rights Act—most offensive.

These adversaries argue that what Congress really did in 1963 and 1964 was draw a circle around the one area where discriminatory treatment could reasonably be presumed—men and women doing the same work. It is hard to believe then, as it is now, that the majority of my colleagues would agree with this proposition—that we simply eliminated one type of discrimination and sanctioned all others.

Most opponents of comparable worth would have the reasonable person believe that job evaluation is some new and strange device, untried and untested. Well, it is hardly that. This type of internal alignment calls for evaluation of the requirements of various jobs regardless of the incumbents. It is nothing more than one of the many tools to help an employer set salaries for occupations within his or her company.

The whole method of job evaluation now helps set the salaries of over two-thirds of the adult age population in America. In fact, since job evaluation came from private industry, it is not surprising that many companies have incorporated the concept of comparable worth within their job-evaluation systems and find it easily done.

I believe job evaluation can be used responsibly and effectively as a measuring stick of the relative worth of various jobs. GAO also concurred with this view and made some very constructive suggestions in its report on how to use this method most fairly and efficiently.

For example, periodic review and updating of job descriptions to ensure accuracy and the use of weighting schemes which do not simply replicate existing wage hierarchies were just a few of the suggestions outlined to improve the use of job evaluation.

Although I agree with GAO's recommendation that both methodologies—referring to the job content analysis and economic analysis—be incorporated in the study, and I would propose that S. 519 be amended to that degree, for the reasons I have outlined above, I wish to make the following qualification. Economic analysis should be used primarily to help explain the external factors, if any, which account for part of the wage differential between male and female occupations. With regard to internal alignment of occupations within the major Federal pay systems, I believe the job content approach is best suited to evaluate relative job worth within and between occupations in this highly complex Federal Government. Job content analysis can also provide an orderly and equitable means to establish internal relationships of jobs and their alignment.

It is important to emphasize that the intent of the study we are contemplating is not to set out to prove discrimination. Our ultimate and overriding purpose is to seek facts and not prejudge results. Our intent is merely this: Let us for the first time since the Federal civil service came into existence in 1923, over 60 years ago, do a comprehensive study under the best and fairest conditions we can find with a broadly based advisory commission under whose control the study would begin. Let's have this commission report its findings to Congress on the extent, if any, discrimination exists and its recommendations for the elimination of such practices.

The Federal Government is virtually unique among all of the employers in the Nation. It has twice as many job classifications as the biggest corporation in the country as well as many broader, more disparate kinds of job classifications than in most companies or enterprises devoted to much narrower products and services.

Why not then examine through study this exceptionally complex governmental unit? I believe the Federal Government now has a chance to initiate, a chance to lead. Either we will or we will leave the field to States, local communities, and companies who have already begun the task. The recent experiences of Colorado Springs and Los Angeles are examples directly on point.

Mr. Chairman, I ask that an article appearing in the Washington Post on March 25, 1985, be included in the record along with my testimony.

Senator **Stevens**. Very well.

Senator **Evans**. The article is interesting because it begins with the question: "Can a staunchly conservative, heavily Republican, nonunion city government find happiness with a bold new policy championed mainly by organized labor and feminists?" "You're darn right we're happy with comparable worth," says Robert Isaac, the staunch conservative mayor. The mayor acknowledged he had incurred the wrath of the local chamber of commerce and many businesses for implementing a new pay system.

In response to their complaints, he put it very eloquently: "We did something fair and just, and in return we got ourselves great employee morale, lower turnover and higher productivity. Isn't that what the private sector's always looking for?"

I am certain it will be only a matter of time before Mayor Bradley of Los Angeles can say the same thing or similar things in support of the city's decision recently to raise the pay of municipal jobs traditionally held by women, and did so with overwhelming support of those who work for the city government.

States, cities, and the private sector will continue to address the issue, and our continued inaction may leave us with no other alternative but to react. This will put the Federal Government at a competitive disadvantage to other employers who will likely provide the cutting edge. Or, more distressingly, and let me emphasize this strongly, more distressingly, if we fail to respond, we will ultimately leave the decision to the courts of the United States. When we do that, we have simply given up our executive and legislative responsibilities, leaving actions to judges who are constrained by no economic or practical limitations.

In conclusion, Mr. Chairman, I am extremely pleased with the outcome of the GAO report. I believe it, along with the suggestions I have made this morning, and the bill I have introduced along with Senator Cranston and others, will provide us with a solid foundation upon which we can convene a comprehensive study of Federal pay-setting practices.

Thank you, Mr. Chairman.

Senator STEVENS. Thank you, Senator. We appreciate your leadership. I hope you are going to join us here for these hearings as long as you can.

Senator EVANS. I would be delighted, Mr. Chairman. It is an issue of extreme importance.

Senator STEVENS. Thank you.

I might say to you, to everyone concerned, we have made some commitments for the hearings. We will continue these hearings today until noon. We have hearings tomorrow from 10 to noon. Then we will have hearings after the recess to complete the testimony.

It would be my intention to get the matter before the full committee before the Fourth of July recess, if at all possible. It is legislation to conduct a further study, not to make a final decision, so I think that it should be considered by the Senate as quickly as possible.

[Senator Evans' prepared statement and the newspaper article previously referred to follow:]

PREPARED STATEMENT OF SENATOR DANIEL J. EVANS

Thank you Mr. Chairman. I am delighted to be here. Today, we are here to discuss the findings of the GAO report as we prepare to initiate a comprehensive study of federal pay-setting practices. The beginning of these hearings represents the next step pursuant to the colloquoy agreement reached at the end of the 98th Congress between me, Senators Cranston, Stevens, Representatives Oakar, Schroeder, and other House leaders. I am pleased that we are proceeding on the pay equity issue according to this timetable and I am hopeful that we can move legislation in the Senate shortly after these hearings.

Today we are faced with having to respond to one of the most pervasive forms of discrimination against women. The public policy issue is the same as it was in 1938 when Congress passed the Fair Labor Standards Act. It is the same as it was in 1963 when the Equal Pay Act was enacted and it is the same as it was when Title VII of the Civil Rights Act was passed in 1964. The only thing new about the issue is that in 1985 we are calling it "comparable worth" or "pay equity." But, our express objective has not changed—the elimination of wage discrimination based on sex.

This nation's progress in the area of equal employment opportunity has always been met with resistence. Historically, Congress has successfully eradicated obsolete and archaic notions in a step-by-step progressions. It is against this historical backdrop that I find the argument by opponents—that comparable worth has nothing to do with the Equal Pay or Civil Rights Act—most offensive. These adversaries argue that what Congress really did in 1963 and 1964 was draw a circle around the one area where discriminatory treatment could reasonably be presumed—men and women doing the same work. It is has hard to believe then as it is now that the majority of my colleagues would agree with this proposition—that we eliminated one type of discrimination and sanctioned all others!

I suggest strongly that there is not a more appropriate step Congress can now take in this continuum which began centuries ago than to initiate a comprehensive study of federal wage setting practices. A study, I might add, which is long overdue. As GAO alluded to in its report, the federal classification system has never been formally studied for sex bias since its inception in 1923.

Numerous public and private sector studies have uncovered strong evidence pointing to the existence of factors perpetuating sex discrimination in job evaluation systems. There is no reason to believe the federal classification system is immune to such factors. Most experts agree that factors used to rate jobs do not correspond closely to characteristics of the contemporary labor force. As you well know, the modern work force is increasingly concentrated in technical and service jobs that did not exist when the systems were developed. Adaption to new technology is another factor not adequately accounted for in current classification methodologies. For example, the clerical field is being revolutionized by advanced technology—unfortunately to the disadvantage of the females who occupy it.

The downgrading of federal word processors is a classic example of who compensation has not kept pace with new skills required to master technological changes. When OPM reaudited jobs of clericals using word processing equipment the job classification was lowered. Word processors were informed that because the end product of their work was a typed manuscript, the job series will rate out at a GS-4. This decision was made contrary to the fact that jobs have become more technical, complicated, demanding and productive. I allude to the word processing example only because I believe it illustrates precisely the type of problem we need to get at in a study of the federal classification system.

That is why Senator Cranston and I have introduced S. 519, which would initiate a comprehensive study of the federal classification system. This legislation is inextricably linked to the agreement we reached during the end of the last legislative session which called for the GAO report we are today reviewing. It is our hope that S. 519 will serve as the catalyst for incorporation of GAO's relevant findings. As both Senator Cranston and I will point out during these hearings, GAO's recommendations are strongly compatible with the essence of S. 519.

At the outset let me say that the GAO report was excellent and I strongly endorse its conclusions. I believe it is the most comprehensive document we have to date on the mechanics of pay equity. However, as GAO stressed in the report, there are some fundamental policy questions that we, as legislators, must resolve.

First, there is the fundamental policy question of who should oversee the study. Recognizing the complexity of our undertaking, GAO recommended that some sort of "steering committee' be established, composed of executive branch agency management, affected groups, experts and employee organizations. I wholeheartedly endorse this concept and would further point out that S. 519 calls for the establishment of exactly this type of committee. The only difference is that we refer to it as a "commission;" however, it would function in the same policy oversight role as GAO envisioned.

I must emphasize strongly that the study must be conducted by an independent and objective body such as GAO and S. 519 prescribe. This is especially important in light of OPM's press release commenting on the GAO report. Then-Director Devine stated that there would be no need for further review of federal pay systems in light of the completion of OPM's own in-house pay equity study. As my colleagues here today remember well, one of the very specific requests we made of GAO was to include in their report an analysis of OPM's alleged internal pay equity review. I was not pleased to learn from GAO, before the completion of its report, of OPM's unwillingness to make this information available. Senator Cranston and I followed-up after the GAO report was submitted to Congress with a formal request for this information to OPM. We received a grossly-unsatisfactory response stating that the information was not yet available. Senator Cranston and I again requested this information after what we thought was a reasonable time for it to be completed. This past Monday evening we received a response from OPM stating that the report was still unavailable for review. I make this point only because I wish the record to make it clear that this type of conduct and behavior is unacceptable from any federal agency, especially one which thinks it should have a major role in the pay equity study we are contemplating.

With regard to the various methodologies available which would be best suited to studying the federal classification system, GAO recommended we use two means in our analysis, either sequentially or simultaneously. I would like to comment briefly on these two methods.

The first is economic analysis which is better known to some as the Human Capital theory. This theory states that external labor market forces of supply and demand bear a direct relationship to compensation and the assignment of people to jobs. This is not to argue, of course, that what happens outside the enterprise has no effect on internal wages and occupational structures. Rather, the argument is that the effects of external supply and demand are sufficiently imperfect to leave room for discretion, i.e. discrimination. The Human Capital viewpoint is premised on the notion that people with less expected time in the labor force, will train less, and will enter those occupations in which less training is required. Now, of course, when you talk about people with less expected time in the labor force, you are talking about women as the situation existed for the last hundred years or more. And of course the idea then that under human capital investment they will train less and enter those occupations in which less training is required. And of course, we see that all over the place in our perfectly-competitive marketplace: we see women entering the nursing profession instead of becoming truck drivers. Women ending up as child care specialists instead of zoo-keepers—the strange results of the human capital theory.

I am not suggesting that economic analysis should have no place in our study. Admittedly, when S. 519 was first introduced we called for a study using job-content analysis. However, on Monday of this week, Senator Durenberger introduced the Economic Equity Act which contained S. 519 as one of its titles. We made a minor, yet important modification to S. 519 before it was incorporated into the Economic Equity Act. In order for our bill to conform more closely to GAO's recommendations we inserted language providing for economic analysis to be used in addition to job content.

Let me explain briefly how these two methods should be used the study. I believe economic analysis can be valid in exposing some of the abnormalities and distortions present in the external market place which may account for some of the wage differntial between male and female occupations. However, I believe the focus of our inquiry should be on the internal alignments of the some 7,000 job types within the federal classification system. Once we can establish an orderly and equitable alignments of jobs internally, we can let the market place respond externally. That is why I believe the second method recommended by GAO, the job content approach, should be given considerable weight in a federal pay equity study.

Most opponents of comparable worth would have the reasonable person believe that job evaluation is some new and strange device, untried and untested. Well, it is hardly that. This type of internal alignment calls for evaluation of the requirements of various jobs regardless of the incumbents. It is nothing more than one of the many tools to help an employer set salaries for occupations within his company. The whole method of job evaluation now helps set the salaries of over two-thirds of the adult-age population in America. In fact, since job evaluation came from private industry it is not surprising that many companies have incorporated the concept of comparable worth within their job evaluation systems and find it easily done.

I believe job evaluation can be used responsibly and effectively as a measuring stick of the relative worth of various jobs. GAO also concurred with this view and made some very constructive suggestions in its report on how to use this method most fairly and efficiently. For example, periodic review and updating of job descriptions to ensure accuracy and the use of weighting schemes which do not simply replicate existing wage hierarchies were just a few of a number of suggestions outlined to improve the use of job evaluation.

Although I agree with GAO's recommendation that both methodologies be incorporated in the study, for reasons I have outlined above, I wish to make the following qualification: economic analysis should be used primarily to help explain the external factors, if any, which account for part of the wage differential between male and female occupations. With regard to internal alignment of occupations within the major federal pay systems, I believe the job content approach is best suited to evaluate relative job worth within and between occupations. Job content analysis can also provide an orderly and equitable means to establish internal relationships of jobs and their alignment.

It is important to emphasize that the intent of the study we are contemplating is not to set out to prove discrimination. Our ultimate and overriding purpose is to seek facts and not prejudge results. Our intent is merely this—let's for the first time since the federal civil service came into extistence in 1923, do a comprehensive study under the best and fairest conditions we can find with a broadly based advisory commission under whose control this study would begin. And let's have this commission report its findings to Congress on the extent, if any, discrimination exists and its recommendations for elimination of such practices.

The federal government is virtually unique among all of the employers in this nation. It has twice as many job classifications as the biggest corporations in the U.S. as well as many broader, more disparate kinds of job classifications than in most companies or enterprises devoted to much narrower products and services. And, why not then examine through study this exceptionally complex governmental unit? I believe the federal government now has a chance to initiate, a chance to lead. Either we will or we will leave the field to states, local communities and companies who already have begun the task. The recent experience of Colorado Springs and Los Angeles are examples directly on point. Mr. Chairman, I ask that an article appearing in the Washington Post on March 25, 1985 be included in the record. The article is interesting because it begins with the question, "Can a staunchly conservative, heavily Republican nonunion city government find happiness with a bold new policy championed mainly by organized labor and feminists?" "You're darn right we're happy with comparable worth," says Robert Isaac, the staunch conservative Mayor. The Mayor acknowledged that he had incurred the wrath of the local chamber of commerce and many businesses for implementing a new pay system. In response to their complaints, he put it very eloquently, "we did something fair and just and in return we got ourselves great employee morale, lower turnover and higher productivity. Isn't that what the private sector's always looking for?" I'm sure that it is only a matter of time before Mayor Bradley of Los Angeles will be saying similar things in support of the city's decision to raise the pay of municipal jobs traditionally held by women.

States, cities and the private sector will continue to address the issue and our continued inaction may leave us with no other alternative than to react and this will put the federal government at a competitive disadvantage to other employers who will provide the cutting edge. Or, more distressingly, if we fail to respond we leave the decision to the courts of the United States. When we do that we have simply given up our executive and legislative responsibilities leaving actions to the judges who are constrained by no economic or practical limitations.

In conclusion Mr. Chairman, I am extremely pleased with the outcome of the GAO report and believe it, along with the suggestions I have made this morning will provide us with a solid foundation upon which we can convene a comprehensive study of federal pay setting practices.

Thank you.

[From the Washington Post, March 25, 1985]

City Near Peak No Piker on Pay

(By T.R. Reid)

Colorado Springs.—Can a staunchly conservative, heavily Republican, nonunion city government find happiness with a bold new policy championed mainly by organized labor and feminists?

"You're darn right we're happy with comparable worth," says Robert Isaac, the loyal Reaganite who is mayor of this thriving city of 250,000 at the foot of Pike's Peak.

"Some of my Republican friends back in Washington have been pretty tough on this idea," says Isaac, immediate past president of the Republican Mayors' Conference. "But I tell them, if they'd try it, they'd like it."

Some government officials and business leaders back in Washington have indeed had harsh words for the concept of "comparable worth"—the idea that women working in traditionally female jobs should get the same pay as men in different jobs requiring comparable skill and responsibility.

Former White House economic adviser William A. Niskanen Jr. has called comparable worth "a truly crazy proposal." Clarence M. Pendleton Jr., head of the U.S. Civil Rights Commission, said the concept is "the looniest idea since Looney Tunes."

"Yeah, I heard that," says Isaac with a shake of the head. "We wouldn't call it loony here in Colorado Springs.

"But what we had before—where a secretary is doing a job that's just as hard and just as important as a truck mechanic, and she's getting $300 [a month] less—now, that was loony. It's just basically unfair."

The liberal notion of comparable worth hit this conservative city four years ago. A group of 36 City Hall secretaries, all women, went before the City Council to complain that city auto mechanics, all men, were scheduled to get a much higher raise than they were.

"I was sitting at that meeting and—boom! There was the issue," recalls Richard Zickefoose, the city's personnel director. "We didn't expect it to come up, but all of a sudden we were faced with comparable worth."

Zickefoose knew that the federal Equal Pay Act requires equal pay for the same work, regardless of the worker's gender. But the law does not apply to workers doing different jobs, no matter how "comparable" the jobs may be.

As the second-largest employer in town (the federal government is No. 1 in this military city), the city government was under minimal competitive pressure to take on the problem, and there was no public employes' union here to force the issue.

But as Zickefoose and Isaac looked into the secretaries complaint, they came to agree that the city had no choice but to set up a comparable-worth pay scale.

"It was fundamentally a moral issue," Zickefoose says. "Sure, supply and demand would have provided us a clerical force at the lower salaries. But that market fact was a result of years of discrimination against women workers. We felt we had no right to take advantage of it."

That settled, Colorado Springs faced the problem that many critics of comparable worth consider insoluble: figuring out which jobs done mainly by women are comparable to different jobs done mainl by men.

"The question is, 'Is a secretary's job the same as a tire repairman's? Is a payroll clerk comparable to a tree trimmer?' And, sure, that's a tough question," Zickefoose says.

Colorado Springs drew its answers from the "Hay Guide-Chart Profile" devised by the Philadelphia consultants Hay & Associates. It assigns points to each job in four areas: know-how (the knowledge and skills required); problem-solving (the ingenuity required); accountability (the degree of supervision required) and working conditions (the degree of danger present).

This "Hay Scale" showed, for example, that the jobs performed by a secretarial supervisor and a probation counselor each totaled 208 points. In 1980, though, the traditionally male probation job paid $1,709 a month, while the female supervisor received $1,389. The woman earned 23 percent less for "comparable" work.

In 1981, the city committed itself to eliminating almost all of that gap in four years. The comparable-worth scheme took full effect in January. Today, the secretarial supervisor's pay is within 4 percent of the probation officer's.

The change brought considerable raises for about 500 female employes and increased the $90 million city payroll by about 2 percent—a relatively small burden for this fast-growing, prosperous metropolis.

For this price the city earned deep appreciation from its female workers. "Morale is sky high," says Betty J. Ketterson, secretary to the public works director and one of the original 36 petitioners. "And when I need to hire somebody, our applicants are the pick of the crop."

But the government has earned the enmity of the local Chamber of Commerce and many businesses. They say the city bought a liberal bill of goods, flouted the free market and raised the pay scale for clerical workers here to astronomical levels.

Mayor Isaac, a real estate lawyer in private life, says the Chamber of Commerce should stop carping.

"We did something fair and just, and in return we got ourselves great employe morale, lower turnover and higher productivity," Isaac says. "Isn't that what the private sector's always looking for?"

Senator **Stevens**. Our next witness was to be Hon. Pat Schroeder from the House of Representatives. She is involved in a hearing on the House side and asked that her statement be printed in the record. We will do that.

[The statement referred to follows:]

Statement of Rep. Patricia Schroeder
at Hearings on General Accounting Office Report on Conducting
a Pay Equity Study of Federal Pay and Classification Systems
before the
Subcommittee on Civil Service, Post Office, and General Services
Senate Committee on Governmental Affairs
May 22, 1985

Mr. Chairman:

I am delighted to be testifying on the General Accounting Office (GAO) report on "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems." The GAO report presents a thorough analysis of the need for a review of the government's pay setting system, and lays out the nuts and bolts for conducting such a study.

This GAO report, along with a preliminary report, documents the extent of the wage disparity and job segregation between men and women working for the government. I would like to emphasize a few points.

- In 1983, women working for the government earned an average of $18,864, while men earned an average of $30,229.
- At grade GS-6, women hold 75% of the jobs. At grade GS-13, women hold only 12.4% of the positions.
- The wage gap between men and women in the federal government has remained almost constant over the past decade.

The Reagan Administration has responded in two ways. First, it ignored the issue, hoping, with the defeat of the Equal Rights Amendment, the push for pay equity would simply go away. It didn't. The Administration then turned to ridicule and derision.

Most frequently quoted is U.S. Commission on Civil Rights

Chairman Clarence Pendleton's characterization of comparable worth as "probably the looniest idea since 'looney tunes' came on the screen." Earlier, former White House economist William Niskanen termed comparable worth "a truly crazy proposal."

I most enjoyed Phyllis Schlafly's comments in Colorado last year. She said that liquor store clerks should be paid more than nurses because they lift heavy boxes; and tree trimmers should be paid more than teachers because they work outdoors. Taken to its logical conclusion, Ms. Schlafly's system would pay kids who deliver newspapers six figure salaries because they drag around heavy bundles and brave the elements.

The GAO report is a good vehicle for coming back to planet earth and letting common sense enter the arena. Reserving policy decisions to Congress, GAO identified several factors that must be considered in an objective, credible review of the federal pay-setting system. And, for a number of reasons, I think it's time for that review. The federal classification and compensation system has not been reviewed for over 60 years. Technology has revolutionized the clerical field, yet OPM classifiers are still struggling to fit computer operators into antiquated position classifications.

Last year, when H.R. 5680 passed the House overwhelmingly, we knew we had the momentum to tackle pay inequity in the federal government. I hope these hearings will spur the Senate to take action on S. 5 and S. 519.

The federal government, instead of taking the lead on this issue, is dragging far behind. Thirty-five States have already studied their pay systems to eliminate discriminatory elements, and twenty states have begun to implement the results of the studies. Many local governments, including the city of Colorado Springs in the state of Colorado, have found that sex-based pay distinctions can be eliminated without breaking the budget. And the result is, according to Colorado Springs Mayor Robert Isaac, "great employee morale, lower turnover and higher productivity."

GAO identified two primary approaches for looking at the wage gap -- economic analysis and job content -- and, in the tradition of Solomon, split the difference. However, I don't think that will work here any better than it did with the baby.

Job content analysis is something we're all familiar with. It looks at the skills and responsibility required by a job and has been used in the federal government for close to 100 years. Even the GAO noted that the job content approach "directly addresses the issue of comparable worth -- whether jobs of equal value are being paid equally."

Economic analysis looks at the characteristics of individual employees, and at the labor market. It then uses those characteristics to explain pay differentials. Its primary use is to hold down costs.

The job content approach examines job characteristics, while the economic analysis approach looks at employee characteristics.

Since our purpose is to measure the value of jobs to the federal government as employer, I recommend that a job content study be conducted first. Then, market forces can be taken into consideration as a brake on costs.

During hearings and debate on H.R. 5680 in the last Congress, we decided that elimination of the wage gap between men and women working for the federal government was a priority. We need a study of the government's pay and job classification systems to determine why the wage gap exists and the GAO report sets out guidelines on how to do the study. Now we have to make the decision to conduct the study. It's the first important step toward eliminating the wage gap.

Senator STEVENS. The next witness is Hon. Mary Rose Oakar, chairwoman of the Subcommittee on Compensation and Employee Benefits, from the House of Representatives. Good morning.

TESTIMONY OF HON. MARY ROSE OAKAR, U.S. REPRESENTATIVE FROM THE STATE OF OHIO

Representative OAKAR. Good morning, Senator.

Mr. Chairman, and distinguished members of the committee, it is a pleasure for me to appear before your subcommittee to discuss the GAO report entitled "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems." I want to commend you, Mr. Chairman, for the swiftness with which you have brought these hearings to the Senate.

I would like to submit for the record my entire statement and just give excerpts from it, Senator, in the interest of time and your schedule.

Senator STEVENS. We will print it in full in the record and appreciate the problems you have and we all have.

Representative OAKAR. Senator, I come to the Senate Governmental Affairs Subcommittee on Civil Service, Post Office, and General Services for two reasons. First of all, I come to testify in my capacity as chair, of the Post Office and Civil Service Subcommittee on Compensation and Employee Benefits, which has jurisdiction over Federal pay practices. I am also here as an advocate for civil rights and fairness in compensation practices.

Along with yourself, Senator, and your leadership, I joined 10 other Members of the House and Senate to request the GAO to examine the feasibility of conducting a pay equity study of the Federal compensation and classification Systems.

Our subcommittee has had numerous hearings on the subject of pay equity, which is the elimination of sex-based wage discrimination, for several years now. Indeed, I have introduced a companion bill to Senator Evans' and Senator Cranston's H.R. 27, the Federal Pay Equity Act of 1985.

Mr. Chairman, as you know, the GAO report on pay equity has received high praise from a wide variety of witnesses—witnesses from the business community, witnesses from the unions, witnesses from women's groups. I concur with the witnesses that we have had.

The GAO has provided a thorough analysis of the options for conducting a pay equity study in the Federal Government. The report was thoughtful, well-researched, and I believe it was objective. It confirms that a wage gap and extreme job segregations do exist in the Federal systems.

The GAO report shows that federally employed women average about 62.8 percent of wages earned by federally employed men, or nearly $12,000 a year less than men. Female State and local government workers fair a little better. They earn approximately 71.5 percent of what men earn. In the private sector, women average 56-percent less than men. Of course, Hispanics, minorities, and black women are even less than that.

The GAO report demonstrated that even though women comprise 49 percent of the labor force in the Federal Government, only

12 percent are in GS-9 to 15 positions, and almost 70 percent are in the lower eight grade levels.

Mr. Chairman, as you know, this is a national issue. This is an issue that will not go away. More than 35 States are either conducting studies or implementing the results of their studies. In my capacity as chair of the subcommittee, we had witnesses from five States that have completed the studies or are in the final stages of their studies. These States confirmed that pay equity is progressing. In my own State of Ohio, for example, where a study is being conducted, the Governor and legislature has agreed to put aside a certain amount of money in anticipation of some modest corrections.

The Governors' conference, in addition, unanimously endorsed the concept of pay equity and pledged to attempt to create a situation of fairness for their civil servants.

Mr. Chairman, as an advocate of civil rights and someone who is committed to ensuring that the Federal work force is adequately and fairly compensated, I believe that it is imperative that a pay equity study be performed in the Federal Government. By conducting such a study as outlined in my bill or outlined in Senator Evans' and Senator Cranston's bill, the Federal work force would know once and for all if their pay is biased because of gender. We really haven't conducted any form of a study of this nature since the beginning of Civil Service, since 1923.

I believe that it is important to remember that the Federal classification system has not been subjected to this kind of examination, and that indeed we ought to be serving as the role model for the manner in which we want others to treat their own employees.

I believe very strongly that the laws relative to pay equity are already on the books—the Civil Rights Act, title VII, and the Equal Pay Act—both of which were passed more than 20 years ago.

We know that sex-based wage discrimination is illegal. We know that many States and many fine corporations along with their work force have implemented their evaluations and that they are attempting to eradicate the whole area of sex-based wage discrimination.

In my opinion, pay equity is a bipartisan issue of concern, as manifested by the fact that two Senators, one Republican and one Democrat, have coauthored a bill relative to a study. It shows the concern that this should be treated seriously and not be dismissed as something that is erratic or crazy or loony or what other terms have been, unfortunately, used.

Senator, I greatly, appreciate your timeliness in conducting these hearings. I am encouraged by the work being done by your committee and by the Senators who have introduced the bill. As you know, in the last Congress my bill calling for a pay equity study in the Federal Government passed by an overwhelming vote of 413 to 6 in the House and was not considered in the Senate. I hope that the Senate will have an opportunity to vote on this legislation in the coming months—I know we are going to do it on the House side—and that we can undertake a study once and for all of the Federal wage and classification systems for sex-based wage discrimination.

I am encouraged by your having these hearings, Senator. I look forward to working with you and other members of your committee on not only this issue but, as we so often do, on other issues related to our fine Government workers.

Thank you very much for allowing me to appear today.

Senator **Stevens**. Thank you very much. We appreciate your courtesy.

I know you were disappointed last year when we did determine that we should have this initial report from the GAO prior to passing a study bill. But we can assure you that we will act as rapidly as we can to resolve some of the issues they presented to us and hope to act on the principal bill introduced by Senator Evans and Senator Cranston as soon as possible.

I think we agree with you, it is really nonpartisan. I think this has to be handled without regard to any partisan considerations. I am sure you agree with that.

Representative **Oakar**. I certainly do. And the vote in the House, Senator, was a real benchmark for it being a nonpartisan issue since it was so overwhelmingly approved by both sides of the aisle.

Senator **Stevens**. We appreciate your leadership and the fact you took the time to come over and join us this morning. Thank you very much.

Representative **Oakar**. Thank you very much, Senator.

[Representative Oakar's prepared statement follows:]

PREPARED STATEMENT OF REPRESENTATIVE MARY ROSE OAKAR

Mr. Chairman, it is a pleasure for me to appear before your subcommittee today to discuss the General Accounting Office [GAO] report entitled "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems." I commend you for the swiftness with which you have brought these hearings to the Senate.

I come to the Senate Governmental Affairs Subcommittee on Civil Service, Post Office, and General Services for two reasons. First, I have come to testify in my capacity as Chair of the House Post Office and Civil Service Subcommittee on Compensation and Employee Benefits, which has jurisdiction over Federal pay practices. I am also appearing as an advocate for civil rights and fairness in compensation practices.

Last session, I was among 11 Members of the House and Senate requesting the GAO to examine the feasibility of conducting a pay equity study of the Federal compensation and classification systems. My subcommittee has held a series of hearings over the past few months on GAO's report and my legislative proposals, H.R. 27, "the Federal Pay Equity Act of 1985," and H.R. 375, "the Pay Equity Act of 1984." The subcommittee has its fourth day of hearings scheduled for Thursday, May 30.

The GAO report on pay equity has received high praise from a wide variety of witnesses. I concur with them. The GAO has provided a thorough analysis of the options for conducting a pay equity study in the Federal Government. The report was thoughtful, well researched, and objective. It confirms that a wage gap and extreme job segregation exist in the Federal systems.

The GAO report shows that federally employed women average 62.8 percent of wages earned by federally employed men, or nearly $12,000 a year less than men. Female State and local government workers fair slightly better, as the earn approximately 71.5 percent of what men earn. And, in the private sector, women average 56 percent less than men. The GAO report demonstrates that, even though women comprise 49 percent of the labor force, in the Federal Government, only 12 percent are in GS 9-15 positions. More than 68 percent are in the lower 8 grade levels.

The GAO report also explains that pay equity studies are being pursued in scores of State and local governments. Thirty five States have taken action related to eliminating sex-based wage discrimination. Five of the States that have completed studies or are in the final stages of their studies provided testimony before my subcommittee. The representatives from these five States—Minnesota, Ohio, Wisconsin, New York, and New Mexico—assured the subcommittee that their work was well received in their respective States and did not in any way disrupt the States' economies. The pay equity cause is alive and progressing. It is disgraceful that the Federal Government has been so regressive.

Most importantly, the GAO report concluded that it would be feasible for a pay equity study of the Federal Government to be conducted. It is interesting that the GAO recommended a dual approach for studying pay equity. First, the GAO suggested a job content analysis and then recommended an economic analysis which takes into account human capital factors. I strongly believe that if an economic analysis were done alone, it would not be adequate in capturing sex-based wage discrimination. Combined with a job content analysis, however, the economic approach would allay any fears that a pay equity study would be one-sided, not accounting for marketplace factors.

The essential element of a pay equity study, as confirmed by GAO, is the job content approach. As the GAO points out on pages 26 and 27, a job content analysis is a form of job evaluation, which is used extensively by employers in the private sector. The job content approach is unique, however, in that it directly addresses gender-based distinctions by looking at job characteristics and assigning value to them.

I am pleased that GAO's discussion about a job content approach is very similar to the structure set forth in my bill, H.R. 27. I believe that this will have a positive impact on the eventual passage of my legislation. The job content approach assumed in my bill and discussed in GAO's report is advantageous because it allows those conducting the study, as well as those affected by the study, to agree on a point system. Similarly, job content factors can be agreed to ahead of time and can specifically address the sex discrimination issue by looking at job incumbents in traditionally female-dominated jobs versus traditionally male-dominated jobs.

Mr. Chairman, as in advocate of civil rights and someone who is truly committed to ensuring that the Federal work force is adequately and fairly compensated, I believe that it is imperative that a pay equity study be performed in the Federal Government. By conducting such a study, as outlined in my bill or as outlined in Senators Evans' and Cranston's bill, the Federal work force would know, once and for all, whether or not their pay is biased because of gender. It is important to remember that the Federal classification system has not been subjected to a thorough examination of sex-based wage discrimination since it was established in 1923.

If gender is used as a factor in setting pay rates and classifying workers, that bias should be eliminated. The Federal Government, as the largest employer in the Nation, has an obligation to its employees, as well as to every citizen, to eliminate discrimination wherever it may exist. The Federal Government must set an example for employers throughout the country by embracing and enforcing civil rights laws, such as the Equal Pay Act of 1963 and title VII of the Civil Rights Act of 1964.

Sex-based wage discrimination is illegal. There is no reason why women and men should suffer financially because this form of discrimination is not being eradicated. I am extremely disappointed with the present administration's stand on this important issue and the constant flow of statements which attempt to demean pay equity. In my opinion, pay equity is a bi-partisan concern that should be treated seriously and not be dismissed as "looney tunes" or "reparation for white middle-class women."

I greatly appreciate your timeliness in conducting these hearings. I am also encouraged by the work being done by Senators Cranston and Evans. As you know, toward the end of the last Congress, my bill, calling for a pay equity study in the Federal Government, passed by an overwhelming vote of 413 to 6 in the House but was not considered in the Senate. I hope that the Senate will have an opportunity to vote on this legislation in the coming months and that we can undertake a study of the Federal wage and classification systems for sex-based wage discrimination.

Again, thank you for allowing me to appear before your subcommittee today.

Senator STEVENS. Our next witness is William J. Anderson, Director of the General Government Division for GAO. He is accompanied by Curtis W. Copeland and Lynn H. Gibson.

I might say to you and your colleagues, Mr. Anderson, you have already heard Senator Cranston and Senator Evans and my comments concerning the study that you did conduct and the report you have issued entitled "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems." You did that in almost record time. We appreciate your courtesy to us in that regard. We look forward to working with you as we try to proceed to make some of the decisions that I am sure you are going to outline for us now.

TESTIMONY OF WILLIAM J. ANDERSON, DIRECTOR, GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY CURTIS W. COPELAND, Ph.D., EVALUATOR IN CHARGE OF THE PAY EQUITY STUDY AND LYNN H. GIBSON, ATTORNEY, OFFICE OF GENERAL COUNSEL

Mr. ANDERSON. Thank you very much, Mr. Chairman. With your permission, sir, I would like to have my full statement entered into the record. I have outlined some remarks that will summarize the thrust of the GAO message here today.

Senator STEVENS. Thank you very much.

Mr. ANDERSON. Let me introduce those accompanying me. You mentioned their names. Let me tell you the role they played in this particular assignment.

To my left is Curtis Copeland, who has a Ph.D. in public administration, who provided much of the expertise in understanding the issues, the very issues that were involved here. Lynn Gibson, to my right, is an attorney in our Office of General Counsel. Needless to say, there are a lot of legal issues we had to understand in order to come to grips with this issue. She helped in that area. Roz Kleeman, I am sure you know, sir, is the associate director in charge of all of our work in the personnel area. Then John Gunner was the project director on this effort.

It just worked out that we had male-female, male-female here. But it was something we were sensitive to as we decided what the staff should be for this assignment.

As you noted, the basis for our comments today is the report that we prepared entitled "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems," issued on March 1, 1985 at your request, among others.

I think it is important to bring out the scope of that study because we tried to do a comprehensive job of understanding the issue and understanding all sides of the arguments that have been presented about it.

First, we assembled a multidisciplinary team in GAO, not only attorneys and evaluators, but experts in systems analysis and statistics and things like that. We did an extensive literature search. We had discussions with experts in job evaluation and labor economists, discussions with representatives of Federal employee organizations, professional organizations, State and local government organizations, a number of Federal agencies, the Civil Rights Commission, Justice's Civil Rights Division, and others.

We had two groups of consultants that we convened. One group was expert on what has been going on out in the States in pay equity matters. The other group was expert on how to do such a study.

I have to emphasize in bringing these expert panels of consultants together for this very purpose, we tried to identify where they come out on the issue to ensure we had balanced views on both sides of it.

The objective of our study, pursuant to the request that was made to us from you and other members, was to describe methodologies to identify unexplained differences between male and female earnings levels which may or may not be attributable to discrimination. In other words, our study was neutral.

I thought Senator Evans' point was very well taken. We didn't go in with a preconception that sex-based wage discrimination necessarily existed and we are going to find it. We went in there to try and see what approach might be used to explain the differences in wages between men and women.

Some background. I won't recite many of these statistics. You have heard a lot of them already. But it is a fact that there is a gross disparity between the earnings of men and women for any number of reasons. We prepared some charts to graphically illustrate this issue, sir.[1] This one here reflects what women's wages were as a percent of men's in the Federal Government from 1970 to date.

You will see that although everyone's pay has gone up over this period, the disparity between what men and women make has remained essentially constant, with women making about 63 percent of what men do.

There is general agreement that some part of this difference reflects discrimination. I certainly subscribe to that view, as surely as I accept the long-term existence of racial and religious discrimination in this country. I am old enough to have learned how to spell armor and honor with o-u-r. I am also old enough to remember, at least in my father's time, that we thought it was only white Anglo-Saxons who were worthwhile in this world, especially male. So I am sure there are some antecedents that can probably explain that.

What has been happening to address the problem? Many States and local jurisdictions have conducted pay equity studies or have made revisions to their pay and classification systems.

Chart II which we prepared for the committee shows that 9 States have initiated preliminary studies of wage or occupation patterns, 16 have initiated pay equity studies, 5 have already started to implement studies, and 7 are otherwise doing something to be more consistent with pay equity principles. Overall, 12 States are already doing something to adjust wages, actually making changes in what men and women are earning, primarily women. Twenty-five States are actively studying these matters, while 13, I hesitate to say, are doing nothing, but at least I am sure they are all observing with interest what is going on in the rest of the States.

The point was made that some private sector organizations have already initiated pay equity studies. We tried hard but couldn't get any information on the numbers or the identity of these. There are some anecdotal cases, but we know it is going on out there.

The Federal Government is conspicuously absent from the list of those addressing these matters, which is presumably why we were asked to take a first step in helping the Congress to decide where to go from here.

There are two approaches for analyzing wage differentials by sex: the job content approach and the economic analysis approach. I will be very brief on this, sir.

---

[1] The charts referred to start on p. 56.

The economic approach identifies variables that predict changes and then seeks to determine the extent to which these factors explain wage differentials between men and women. Our report brought out that there are three avenues of inquiry in this regard; the first is the human capital approach, the capital stock that the employee brings to the workplace in terms of education and experience. This factor presumably influences productivity; hence, the pay they could or should make.

Past human capital economic analysis studies have been able to explain no more than half of the difference in men's and women's wages.

The second avenue uses occupational characteristics. This approach recognizes that in fact there are a number of occupations which are predominantly male or predominantly female. Again the point was made, I think it was by Senator Eagleton, that 55 percent of Federal female employees are in 8 percent of the occupations, typical of what is also found in the private sector.

The third avenue under the economic analysis approach is something called internal labor markets whereby once you get into a firm, there can be any number of things that go on regarding how wages are fixed that are particular to that company, really irrelevant to what is happening on the labor market generally.

The job content approach, again I will be brief, uses job evaluation techniques to try and assign a value to a job or to an occupation. We have really found that there are a number of approaches under the job content approach. One we find which has been used in every study we were able to identify that has been made to date is the point factor approach.

In this technique you try and identify the essential constituents of a job, assign value to them, look at an individual job, and try to decide what its value is in terms of the attributes of the occupation.

For example, the State of Washington study was based on a methodology used by Norman D. Willie and Associates. The four factors were job knowledge and skills, mental demands, accountability, and working conditions. The job content approach tackles head-on the question of whether jobs of equal value to the employer are being paid the same. It measures comparable worth.

On the other hand, there is still a lot of subjectivity in selecting the factors and in assigning them values and in judging them in individual jobs. The National Academy of Sciences identified a number of these weaknesses but did conclude in its report "Women Work and Wages" that the job content approach can be used to determine whether jobs are fairly compensated and can help reduce discrimination when it exists.

Our final conclusion on the study approach is to use them both, the economic analysis and the job content approach. My staff has strived mightily and unsuccessfully to get me to understand exactly how this would be done technically, to understand the real intricacies of it. But I know that most of our expert consultants agree with them that this is the way it should be done.

Where do we go from here? Well, our report suggested, and it is something that is also reflected in a number of the bills that have come out of both houses, to provide for the creation of a steering committee to bring objectivity and expertise. Senator Evans' bill, S. 519, provides such a mechanism. Most States use such an approach. The steering committee would determine the specifics of who and how the study would be conducted.

We were asked to comment on cost considerations. We found a range in Minnesota of $85,000 to get its study done to North Carolina which spent $650,000. I can't tell you what it would cost in the Federal Government. I expect it could be some multiple of that $650,000, depending on the methodology that is selected to do the job.

For example, are you going to try and stratify by agency? There have been studies done which indicate that the type of wage disparities we are talking about do vary significantly across Federal agencies. I know one of our consultants, Dr. George Borjas of the University of the California, Santa Barbara, has written a paper on that subject.

We went to the Bureau of the Census to try and get their help. Obviously, as things start to jell a little bit, I think the Bureau will be of great help in putting a dollar value on what, for example, the most critical and essential part of the study will be: sending the questionnaire to Lord knows how many people. They cited a recent study they did where they surveyed 87,000 people and it cost about a million dollars.

Now let me turn to another area, legal considerations involved. I guess the basic question here was will the Federal Government necessarily be driven to address the pay equity issue by the courts, if it does nothing? I guess the way we came down on that, after looking at a lot of cases, is there is uncertainty at this time, mixed signals. Despite Gunther, we are still uncertain whether title VII of the Civil Rights Act will be interpreted to cover equal pay for comparably valued but different jobs; the uncertain precedence value of Charlie Brothers where the court found comparability in jobs that were not substantially the same; *AFSCME* v. *State of Washington* under appeal in the ninth circuit. An indication of the ninth circuit action may have been found in the *Spaulding* case where the court held a wage discrimination differential. Jobs only being similar will not itself be discrimination.

The bottom line there is uncertainty whether in fact we would necessarily proceed to be prodded by the courts into addressing the matter in the Federal Government.

But should legal action be a consideration, the possibility of legal action or any consideration at all, shouldn't the basic equity issue be sufficient cause for moving out? But again, there is the question of the Federal Government's role in this. As the model employer? In that case it would seem appropriate for the Federal Government to tackle the issue. Or the follower? If that's so, we have a concept saying our pay is based on what we find in the private sector.

I know you will hear about concerns the private sector has about what they foresee as the disruptive effect of significantly changing the wages paid women for particular occupations in the Federal Government.

There are about 17 million government workers at all levels, about 15 percent of the work force, as I calculate. So we are talking about an important issue here, obviously.

We need to recognize, in closing, that a decision to proceed with the Federal pay equity study may set in motion an irreversible process that will necessarily culminate in change, which to me underlines lines the importance of carefully considering what to do and then doing it right the first time.

I will stop there, Mr. Chairman. We will try to answer any questions you or Senator Evans may have.

Senator STEVENS. Thank you very much, Mr. Anderson.

The legislation that passed the House last year caused considerable disagreement in the Senate. I think that you have touched on it briefly. It seemed that that legislation presumed discrimination and tried to set about a study to find out whether it existed.

We, instead, wanted to have a study to determine what we could do to bring about pay equity, and approached it on the basis of the equity considerations, without an elaborate investigation as to why our predecessors developed the pattern that is represented by your charts.

You said in something presented to us that a decision to proceed with a Federal pay equity study may set in motion an irreversible process with far-reaching implications. Would you like to elaborate on that?

Mr. ANDERSON. Yes, sir. What we had in mind when we wrote that was the precedent of *AFSCME* v. *State of Washington* where, in good conscience, the State of Washington approached an examination into the problem, conducted a study, in fact identified certain differences, certain problems, and did not subsequently act on them. Ultimately, that was the reason, or one of the principal reasons, that the court chose to impose a solution on the State of Washington.

So our point is that once you do this, I think inevitably you are going to identify unexplainable differences. If you fail to act on them, I think you are inviting the courts to act, as they did in the State of Washington, and push the Federal Government to a fix.

Senator STEVENS. Of course, the Senator from Washington is more familiar with that than I am.

In your study, and I have to tell you I have read summaries of it, have you determined whether it is possible for the Federal Government to proceed to make the inquiry without incurring the risk that the State of Washington found itself exposed to?

Mr. ANDERSON. No, sir. I think that would involve predicting how the courts might come out on this. I don't think we are capable of doing that. I think that it is impossible to forecast in advance what would happen.

I think that there is a strong probability, though, based at least on that one decision. And I would say if in fact a study identified residual differences that could reasonably be attributed to sex-based wage discrimination, we would probably expect that the courts would compel the Federal Government to act on that knowledge.

Senator STEVENS. The subject has been around for a long time. I presume if there were an avenue to get the courts to tell the Congress to change the Federal pay scales, that that would have been pursued by now.

What I am interested in is finding a way to conduct a pay equity study without limiting the options of those people who may be in Congress at the time it is completed.

Mr. **Anderson**. I think the point that was made by the court, sir, was if in fact we had an unbroken chain of events and the study is conducted and action of some kind is taken, that we probably wouldn't have any problems. I don't think that the court would see fit to insert itself.

The problem in Washington, and Senator Evans alluded to it, was we had this broken chain of events. We had this study conducted and then inaction.

I would say regardless of the findings of the Federal study, there could be appropriate deliberation of Congress as to what implementation should follow, could follow, logically, from the results of the study. If all of that continued in one continuing course, I don't think there would be any problem.

Senator **Stevens**. A subsequent Congress could look at the study and decide that the Federal Government couldn't afford any change and not take any action. If we initiate a study, if we increase the exposure of the Federal Government to a decision such as faced the State of Washington, then I can tell you I am not sure we would be able to get this bill through the Congress now. There must be a way to devise an inquiry into the disparity of pay, as you have disclosed it in your study, without mandating a conclusion that will automatically lead to an exorbitant risk that the courts will mandate change.

Senator **Evans**. Mr. Chairman, could I comment just briefly on the consequences of inaction in the State of Washington.

As I said in my testimony, we did propose a step-by-step resolution of the problems we discovered. It would have cost a very, very small fraction of the ultimate court decision. All a comparable worth study does is relate the value of one job to another. It does not require that any agency or any company bring those who are below the line up to a certain line, any more than it prevents you from suggesting that there are certain people who might be overpaid and can be frozen in wages until they come back into an alignment. In fact, that is precisely what we suggested in the State of Washington.

I think there are plenty of alternative ways of resolving inequities and at varying costs. In fact, you could do it with no cost at all if you chose to say there are as many people overpaid as underpaid.

I am not suggesting that is going to be politically a very wise or easy thing to do. But the experience both in our ultimate proposal to the legislature in the State of Washington and the experience of Colorado Springs just recently and the experience of the city of Los Angeles was a successful resolution of the study. Carrying it out and implementing it doesn't have to be very costly.

Mr. **Anderson**. Let me give some numbers on that, if I may, Mr. Chairman. Some of the various studies that have been conducted and that are being acted on by the States, the settlement has run as a percent of total payroll anywhere from 1 to 4 percent. Now in the Federal Government, on the top side, I guess you would be running $3 or $4 billion a year. So you are talking big money, sir, if it worked out that way in the Federal Government study. On the other hand, at the other extreme, it could turn out to be less than $1 billion. That is in current dollars.

Senator **Stevens**. I understand that. The problem that we faced last year, that I faced, was mediating between the people who happen to agree with Senator Evans that a study should be made and those who felt that even initiating the study would automatically expose the Federal Government to litigation. That was based on the fact that the House had presumed that the inequity was due to discrimination.

Now, there are remedies for that, as I suggested last year. We can close the courts to a Federal question if we want to, pending consideration by Congress. It may be that we will have to do that, if these people continue to assert that this risk is too great.

Ms. Gibson, do you want to comment?

Ms. **Gibson**. There are just two things I want to mention. First of all, I don't think it is entirely clear that the Government would be liable for failing to implement a job evaluation study.

Senator **Stevens**. I agree with that. But that is not the problem my colleagues were raising. They said we are raising a substantial risk that the decision would be contrary to the Government.

Ms. **Gibson**. There has been a recent decision that was issued in April of 1985 by the northern district of Illinois, the district court, in the *American Nurses Association* v. *State of Illinois*. The decision appears to be somewhat contrary to the decision *AFSCME* v. *State of Washington* and holds that an employer is not obligated under title VII to implement a pay equity study which it commissions and performs. The decision states that an employer should be allowed to consider economic considerations, labor demands, and the possibility that some different study might produce different results.

So there are different court cases now on failure to implement. So maybe the risk is less substantial or might be less substantial, depending on how the appeals of those cases are resolved.

Senator **Stevens**. Do you believe it is possible, Mr. Anderson, for us to limit this study because of time and resource limitations to just the job content approach?

Mr. **Anderson**. I don't think that the added cost of incorporating the economic analysis approach would be so much that it would be worthwhile to proceed with only the job content approach. I think that the same calendar deadline could be established, the 18 months in S. 519, and that the costs and the scope of the job probably wouldn't be influenced that greatly.

I certainly wouldn't want to make a decision to do that without understanding what I am gaining by limiting the approach.

Would you care to comment, Mr. Copeland?

Mr. **Copeland**. Sure.

The inclusion of economic variables would really be just the addition of certain questions in a questionnaire in which you would gather the needed information. So I would think the advantages of including economic analysis would outweigh the disadvantages in terms of a slight additional cost.

Senator **Stevens**. Have you decided what would be a proper timeframe for this study? Can we put a time limitation on it?

Mr. ANDERSON. I would say yes, that really like a GAO study, you can put a lot of folks on it or you can put a few folks on it. That drives to a great extent how long it is going to take you to do it.

I would say that we thought the 18 months in S. 519 was reasonable, sir, and that in fact the study could be scoped and resources brought to bear to get it done quickly, even with the gathering of a large amount of data.

Senator STEVENS. You realize that automatically puts the decision into another Congress.

Mr. ANDERSON. Yes, sir, I realize that.

Senator STEVENS. It is not possible to get one done in half that time?

Mr. ANDERSON. I would say that the subject could be explored by the steering committee and the group of experts that is convened at that time, and perhaps it could, sir. I hate to rule it out totally.

I guess, after I think back to the Manhattan project, we can obviously do about any darn thing we want to if we want to put the resources on it. I just don't know how reasonable it would be.

Mr. COPELAND. As we point out in the report, the time and cost would vary considerably depending on the resolution of the policy decisions that have to be made as to the scope of the study and nature of methodology.

Senator STEVENS. Did you contemplate the study would include the non-Government portions of the economy?

Mr. ANDERSON. No, sir. The study we were contemplating would strictly be based on employees within the Federal Government.

Senator STEVENS. It would be really a survey primarily of the sublevels of employer representatives, wouldn't it, I mean the supervisory people?

Mr. ANDERSON. Well, it would be representative of all of those 900 occupations. We were suggesting, by the way, that an appropriate starting point could be those 83 percent of Federal employees who are in FWS and the GS series, and within that group we would expect to have a representative sample of everybody there, all 1.9 million of them, hit all occupations and all crafts within that.

Mr. COPELAND. In essence then the study would be stratified by occupational group.

Senator STEVENS. But those people don't write job classifications. Isn't it primarily the job classifications that determine pay?

Mr. ANDERSON. That is correct, sir. We are interested in the jobs that are being performed by these people. In other words, this study is going to have to provide for, at least with respect to the job content part of the job, a selected sample of occupations. Again, I am into some decisions that the steering committee would make in conjunction with whomever is selected to do the study. What kind of a sample are you going to draw, how many; and then those occupations, individual jobs, within occupations, are going to have to be examined, studied closely through information provided by the employee, through the experts that come and find out what the employee is doing, to try and identify or to evaluate that job in connection with the point factor method. So they will be looked at rather than looking at all of these people out there.

Senator **Stevens**. You don't believe we have some statistically balanced agencies that we could select one or two areas or agencies of the Government and make the study and base the judgment for the whole Government on the results of a limited study?

Mr. **Anderson**. We have the complication that Dr. Borjas surfaced in his studies and I think a study by Dr. Patricia Taylor. They both surfaced the same issue; namely, there are disparities across agencies, significant disparities, for any number of reasons. I think that you have to do some exploratory work in the methodology area before you can even get a fix.

For example, sometimes in trying to decide how to size a sample you have to understand a little bit more about what the universe looks like. So you do some exploratory sampling which just leads you to the decision on what kind of a sample you will draw.

Senator **Stevens**. The net result is that you really believe we are going to have to sample the whole Government?

Mr. **Anderson**. No. I don't know that, sir. That is what I am uncertain of. Perhaps you can decide, given the constancy of the occupation, and just suffer whatever inaccuracies or problems might be associated with different agencies doing it differently. Perhaps the experts would say oh, we can bypass that because it is a marginal effect. I can't say that.

But there is a right way and a wrong way of doing it. This is where I look to people who really understand what regression analysis is all about and some of these other techniques to tell me how I can do it and have a scientifically defensible product.

Senator **Stevens**. Maybe I am too simplistic, but it seems the approach is going to lead us to such a complex study we are not going to get it in sufficient time to prevent the court decisions that people are fearing.

Mr. **Anderson**. These approaches are tried and tested, sir. This won't be a ground-breaking effort. All we have to do is just decide how to use the approaches that other people have figured out and used already in the environment of the Federal Government.

I am making it sound complex here, but it has been done. It has been done in a number of different places on other occasions. It is just a case of tailoring it to the circumstances of the Federal Government.

Senator **Stevens**. I know my State did it, but they are not very large in population, though very large in area. They just proceeded on the reclassification basis. Why can't we do that?

Mr. **Anderson**. That should be perhaps one of the things that the steering committee could explore, sir. As I said, I think there is a need to get started with it, and how the methodology will shake out is not fixed at this point in time.

Would you care to comment on that?

Mr. **Copeland**. A reclassification effort is basically the fifth category on our chart. Certain States have done just that. They have revamped their classification system in order to correct what they believe were wage inequalities.

That is a possibility. And as Mr. Anderson pointed out, that is probably a decision that should be left up to the steering committee.

Senator **Stevens**. What if we just would approach this from the point of view of a law which would say that in establishing job classifications, the following criteria would have to be used to determine the basic entry pay or differences in the basic entry pay in the Federal Government.

Why couldn't we approach it from the point of view of what must be done rather than finding out what has been done?

Mr. **Anderson**. Let me make one point, if I can, Mr. Chairman. We have gone out and done a lot of work and gained some instant knowledge on this subject. You are asking questions here that there are experts around for. I have to say that as much as we learned about this, we don't profess to be experts like Hays and Willis. I would say with these questions I would feel more comfortable if we had somebody like that responding rather than ourselves.

Senator **Stevens**. We may do that. I just wonder—I think no matter what study we conduct, in the final analysis, someone is going to come to Congress and ask them to pass a law to change the existing system. What I wonder is why couldn't we just devise a system now and put it into effect?

Mr. **Anderson**. As I said, sir, that might be something. You might want to charge the steering committee with exploring some alternative approaches. Maybe it ought to be a phased approach. Maybe we look for the simplest solution that we can. I don't know how you might phrase that direction. But I am sure it is possible.

Mr. **Copeland**. I would just point out that there are over 60 different pay systems in the Federal Government and 20 different evaluation systems being used currently. That would necessitate changes in the statutes.

Senator **Stevens**. We could do that.

Mr. **Copeland**. That is true. But that again is a policy decision that would have to be made by someone with the authority to do so. We were asked to lay out options for conducting a study.

Senator **Stevens**. All right. Thank you. Senator Evans?

Senator **Evans**. Thank you, Mr. Chairman. Just a couple of questions.

I think I am fundamentally disturbed by some of the escalating rhetoric on the issue. You have had a chance in the preparation of your report to interview and consult with a number of experts, both advocacy and adversary groups. I suspect you are in a pretty good position to help set the record straight as to what comparable worth and pay equity really means.

I wonder if you could describe what the advocates mean when they speak of comparable worth as opposed to what the adversaries state as their perception. I am concerned about people who talk about revolutionizing the market place and abolishing the free market and wage boards.

Mr. **Anderson**. Yes. Curtis Copeland to my left here was personally at all the meetings we held with all the experts I referred to earlier. I want to defer to him to answer that.

Mr. **Copeland**. Senator, I have spoken with the National Committee on Pay Equity. They represent over 300 individuals and organizations. So I am using their point of view as the presentation for the proponents of comparable worth. The opponents' views are those that you will hear later in these hearings, I am sure.

Opponents generally argue that comparable worth is a fairly narrow concept which requires that only job evaluation scores be used in compensation systems. Proponents, on the other hand, argue that other factors such as merit or seniority or even the market can be included into a pay equity compensation system. Opponents view job evaluations as unable to establish a universal measure of job worth so, therefore, comparable worth will not work. Proponents view job evaluation in terms of individual organizations. Therefore, they believe that comparable worth will work.

Opponents believe that comparable worth would mean the elimination of the total wage gap; that is, the total gap between men and women should be eliminated. This is their view of comparable worth. That is what they believe the proponents believe.

Proponents, on the other hand, believe comparable worth means elimination of the wage gap that is due to discrimination. Therefore, they call for studies such as the sort proposed for the Federal Government.

Senator EVANS. Thank you. It just seemed to me from the very beginning, going clear back 12 or 15 years, that we have seen a rising intensity of opposition which often is based on inaccurate perceptions of what this concept is all about and what is being attempted. I think that has been a very helpful distinction.

I notice in your testimony, and one of the things we struggled with in drafting S. 519 is, how the independent job evaluator assisting with the study ought to be selected. You mentioned in your testimony some difficulty with our requirement that GAO would do some analysis and submit names to the commission.

Do you care to give us some of your thoughts as to what a better alternative might be? How do we effectively seek out, analyze and choose the appropriate consultants, or is this something we should do directly in-house without an outside consultant?

Mr. ANDERSON. We have done a lot of talking about that amongst ourselves, Senator Evans. I guess for some of the reasons that I mentioned to the chairman earlier, we ourselves looked in a real hurry at this subject, but we don't profess to be truly expert at it. We understand what evaluation is all about and how you should go about doing that methodologically. I think we would be helpful to look behind somebody and help assure the Congress as to whether a study that is proposed makes sense and is being approached appropriately from a methodological standpoint.

As to whether any one consultant could in fact do this study, I am sure given the scope of the study in the Federal Government and given the fact we want to incorporate economic analysis as well as job content, maybe somebody like Hays or Willis might have to pull in some help for themselves, but I am sure that there will be somebody out there who will respond to a request for proposals by the steering committee to do a study like that.

I think that it would be appropriate for GAO to assist the staff of the steering committee in how to go about making that selection, or even a consortium, perhaps, depending on how that shakes out.

Senator EVANS. Let me ask it in a somewhat different way. I presume during the course of the preparation of your report you had a considerable number of interviews with those who are the current national experts in the field.

Mr. **Anderson**. Yes.

Senator **Evans**. Did you ask them about their views of who ought to conduct the study? If so, what was their response?

Mr. **Anderson**. Yes. Their response was they all want to do it, I think, single-handedly themselves. But they all volunteered their services in this regard. It was so self-serving I hated to put it in the report.

I think also they were uncertain as to how to go about doing it. I think they understood our concern. A lot of people think GAO, just by virtue of its independence and its striving for objectivity at all times, looks like a good outfit to be in charge of the study.

I am still troubled by the fact that we always have to know enough about a subject to keep our consultants honest, really honest, even when we use them. That is our obligation.

They didn't have any clearcut solutions for us, either. I don't think they saw it as any real problem in finding people who could do it. I know your bill provides for us to come forward with some names of individuals and, indeed, organizations. We could do that, sir. We identified who the experts are and how to get in touch with them. We could assist the committee and its staff in contacting those people and sharing with them what we found out about who is who in this arena.

Senator **Evans**. Thank you, Mr. Chairman.

Senator **Stevens**. Thank you.

I do thank you very much. I think we are going to be off to an interesting inquiry. I do think it will have to be pursued.

I still have that residual question in my mind as to whether we ought not just sit down and do the job now.

Mr. **Anderson**. Yes, sir.

Senator **Stevens**. I wonder whether another study is actually needed. Are you convinced another study is actually needed to realize the impact of the statistics you have shown us?

Mr. **Anderson**. The thing is we heard that 62.7 percent when we started off. I really don't know what that means. I really don't know how to go about addressing that unless I have a little more insight into what that 62.7 percent really represents, Mr. Chairman.

I feel the need for more study. I would be really working in the dark. I certainly don't assume that the difference between 62.7 and 100 percent represents discrimination. I know there are a lot of other factors that account for it. I feel a need for some added wisdom on how much do I need to adjust? Do I go the 4 percent as some States did of all payroll, 1 percent someplace else? I feel the need for that type of information.

Senator **Stevens**. All right. We thank you very much. We thank you, Mr. Copeland and Ms. Gibson.

Mr. **Anderson**. Thank you.

Senator **Stevens**. We will be in touch with you, I am sure.

Mr. **Anderson**. Thank you, sir.

[Mr. Anderson's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF WILLIAM J. ANDERSON

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss our recently issued report entitled Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems (GAO/GGD-85-37, March 1, 1985). As you know, the report was prepared at your request and at the request of 10 other Chairpersons and Members of Congress.

Our report discusses the pay equity issue, describes two general methodological options--economic analysis and the job content approach--for conducting a federal pay equity study, and concludes that use of both approaches would be the best way to conduct a comprehensive study. Our report also suggests that the Congress should establish a steering committee to direct the future course of a federal pay equity study.

Before discussing the methodological options in detail, however, I would first like to provide the subcommittee with some background information on the pay equity issue.

Background

Employment statistics from the Census Bureau and the Bureau of Labor Statistics show that on a national basis women earn about 40 percent less than men. Similarly, data on federal employment from the Office of Personnel Management indicate the existence of a wage gap between men and women. For example, 1983 data on federal white-collar workers show that men earned an average of $30,229, while women earned an average of $18,864, or about 38 percent less than men. And, this wage gap has changed little over the past decade. In 1970, for example, women employed in federal white-collar jobs earned 39 percent less than their male counterparts. Chart I, now before you, depicts average men's and women's wages in the GS system from 1969 to 1983. (The appendix to this statement provides more detailed salary data for various federal pay systems.)

These statistics show that there is a continuing wage gap between federally-employed men and women. What is not clear is why this pay gap exists and whether discrimination plays a part. Some suggest that at least part of this wage gap is attributable to employers' failure to pay women "comparable worth" for their work. They note that because women and men usually work in different jobs, existing equal opportunity laws, particularly the Equal Pay Act of 1963, cannot end wage discrimination against women. The concept of comparable worth, however, goes beyond equal pay for equal work and suggests that there should be equal pay for work of "equal value" to an employer. Value is commonly measured in terms of skill, effort, responsibility, and working conditions. The term "pay equity" is often used interchangeably with comparable worth. However, pay equity may be viewed as a broader term and refers to any efforts designed to assure fair and objective wage setting practices.

Many states and local jurisdictions have conducted pay equity studies or have made revisions to their pay and classification systems consistent with the principles of pay equity. Chart II, now before you, shows that many states have actively pursued the pay equity issue in recent years. Nine states have initiated preliminary studies to gather information on wage or occupational patterns. Sixteen states have initiated pay equity studies, and 5 states have started to implement study results. Seven other states have begun or completed revisions to their classification systems consistent with the principles of pay equity. Also, some private sector employers have initiated pay equity studies, and some have made adjustments to their pay systems based on study results.

Thus, pay equity studies have been done in both the private and public sectors, and pay adjustments are being made in some cases. The federal government, however, has not initiated such a study--although many public and private sector groups and individuals have called for such a study. Accordingly, as you requested, we have developed information on how such a study might be carried out at the federal level. One option involves economic analysis, and I would now like to discuss that approach.

ECONOMIC ANALYSIS

One way to analyze wage differentials by sex involves the use of economic theories and models to determine why women earn less than men. Typically, economists and other researchers have carried out such analyses by attempting to identify variables that predict wages and then seeking to determine the extent to which those factors explain wage differentials between men and women. Understanding which factors account for wage differentials may help in determining which of those differences may be justifiable.

Empirical applications of these economic theories and models tend to focus on three areas: (1) the characteristics of individual workers; (2) the characteristics of the occupations in which different workers are found; and (3) the characteristics of institutional environments, in which many wage decisions are made, including recognition of regional variations.

The first area relies on the "human capital" model of earnings levels. This model is based on a presumed relationship between certain individual characteristics (such as education and length and nature of work history) and productivity. These individual characteristics are thought to constitute an "investment" in human capital and, therefore, to affect levels of individual productivity.

Presumably, a greater investment in human capital leads to greater productivity and, in turn, to higher wages. Therefore, differences in individual productivity are seen as a partial explanation for wage differentials between different categories of workers, such as men and women.

The human capital studies that have been conducted over the years generally have been able to account for no more than one-half of the wage gap between men and women. This suggests that differences in the distribution of these characteristics explain some, but by no means all, of the wage gap. As a result, researchers have explored other means through which to explain the remaining wage gap.

One such approach focuses on reasons for and consequences of the observation that male and female workers tend to be concentrated in different occupational categories. Some contend that the concentration of women in relatively few occupations is the result of women's personal choices. Others assert that it is a result of employers not providing women access to certain kinds of work. Still others argue that the concentration of women in particular job categories results from a combination of choice and lack of access; that is, women choose to enter certain occupations because they believe they will be denied access to others or, even if allowed access, will have restricted advancement opportunities.

Regardless of why women are concentrated in particular occupations, the fact that they are so concentrated tends to be associated with lower wages for women than men. Possible explanations for this condition include (1) an oversupply of female workers with particular skills, (2) the occupational features associated with female-dominated jobs, and (3) the personal prejudices exhibited by employers.

Researchers examining the effect of occupational distribution on wage differentials use certain indicators to measure the independent effect of occupation on wages. Examples of such indicators include occupational classification, industry category, percent female in the occupation or industry, and the median income of male and female job incumbents. In general, the inclusion of occupational variables has enabled researchers to account for some additional portion of the wage gap, although absolute percentages vary.

A somewhat different approach looks at the role played by the "internal labor markets," which exist within many large organizations. The term "internal labor market" refers to the existence of distinct administrative structures within individual firms and organizations which independently affect wage setting and job allocation. Internal labor market analysis accepts the basic premise that supply and demand plays a role in the determination of wages and occupational distribution, but notes that in many wage-setting situations those factors tend to operate imperfectly, thereby allowing for significant discretion in wage setting and job allocation. Thus, various employer practices (for example, classification and compensation systems or promotional practices) are thought to exert an independent influence on the wage-setting process.

Most of the empirical research conducted along these conceptual lines has focused on the private sector. Nevertheless, a limited body of research is available concerning the existence and extent of sex-based wage differentials in the federal government. One economist has sought specifically to assess the extent to which various human capital and other variables interact to explain wage differentials in the federal government. The sex of federal employees was found to be a strong predictor of earnings even after the effects of two key human capital variables--education and job tenure--were accounted for. Moreover, the resulting wage gap was found to differ on an agency-by-agency basis. Additional research has at least partially confirmed these findings.

In sum, economists have generally found it possible to explain at least part of the wage gap by focusing on differences in individual, occupational, and institutional characteristics. Thus, it may be appropriate to include economic analysis in any study of wage differentials by sex in the federal government.

Despite conceptual and practical differences between the various possible economic approaches, a general study outline can be established. Specifically, an economic study within the federal government should include the

--development and articulation of a particular goal in order to guide all subsequent steps as well as the interpretation of study results (for example, an economic study might seek to identify factors that explain the wage gap),

--determination of data sources and how to obtain them, and

--selection of appropriate research methodologies and statistical techniques.

Each of these study components involves specific issues that should be addressed and policy decisions that need to be made before a federal pay equity study is initiated. For example, one key issue that needs to be addressed is whether the study should be limited to current compensable factors or whether other factors should be included in the study. Current federal law defines certain legitimate bases of pay differences between federal employees, including job difficulty, experience, performance, and, for some jobs, locality. Economic studies have also focused on such variables as age or marital status which are believed to affect pay. If the study results are to be implemented without changing current compensable factors, variables not in those statutes should not be included in the study.

Another key issue centers on the question of whether the federal government should be viewed as a single employer or whether each agency should be viewed as a separate employer. Depending on how that and other issues are resolved, the study approach could vary substantially.

I would now like to move to a discussion of a second study option, which centers on job content analysis.

THE JOB CONTENT APPROACH

Another way to analyze wage differentials by sex is to use the job content approach, which focuses on characteristics of jobs rather than the characteristics of individuals or the workplace. Under this approach, a technique known as job evaluation is used to determine the value or worth of jobs to an employer and to identify pay differences between comparably evaluated male- and female-dominated jobs.

Job evaluation is widely used to set pay in both public and private organizations, and a form of job evaluation has been used to set pay in the federal government for over 100 years. Thus, job evaluation is not a new concept or particular to the pay equity issue. Also, although commonly contrasted with market-based approaches in pay setting, job evaluation systems typically include some market considerations in establishing factors and factor weights and in making pay determinations on the basis of evaluation results. Pay equity studies using job evaluations also tend to incorporate adjustments which seek to remove any bias from the evaluation system to be used.

The most common type of job evaluation is the point factor method. In this method, a set of factors is selected that is intended to reflect features of the jobs that the employer values. Each job receives a certain number of points on each factor and the total number of points indicates the job's worth to the organization.

In any case, a series of steps are usually followed in conducting a job content study:

--First, a set of key or benchmark jobs is selected for study.

--Second, a system for evaluating jobs is developed or selected, involving the determination of compensable job factors, factor weights, and a scoring system.

--Third, all jobs to be evaluated are analyzed and described.

--Fourth, the job information derived is used in the evaluation process to determine the worth or value of the jobs to the employer, which is usually represented by a point score.

--Finally, the average salaries of similarly evaluated male- and female-dominated jobs are compared and any difference in salaries is noted.

Within this basic method, two general types of job evaluations can be used--an a priori or a policy-capturing system. In an a priori job evaluation system, factors and factor weights are specified in advance of the study either by choosing factors and weights believed relevant to the organization or by adopting a commercially-available evaluation system. The Washington State pay equity study using the Willis and Associates evaluation system is an example of this type of job content study. In the policy-capturing method, factors and weights are analytically derived as part of a process that seeks to replicate the organization's existing pay system. However, pay equity studies using this evaluation method should adjust the analysis to identify and remove any suspected bias. A study currently underway in New York State uses a modified policy-capturing approach. Also, many evaluation systems and job content studies include both a priori and policy-capturing features.

One advantage of the job content approach in analyzing wage differences by sex is that it attempts to address directly the issue of comparable worth--whether jobs of equal value are being paid the same. And, in fact, all pay equity studies we are aware of have used the job content approach. One way in which pay differences can be measured is by comparing the average pay of job incumbents. However, any difference in average pay for comparably-evaluated jobs should not be assumed to be the result of discrimination, as other factors such as seniority, individual productivity differences, or local prevailing wage rates may legitimately cause pay differences. But the influence of these factors can sometimes be reduced by using other measures of pay, such as the midpoint of the jobs' evaluated grade.

Concerns about the job content approach center on the ability of the job evaluation process to measure the worth of the jobs being studied. As mentioned in the National Academy of Sciences report entitled Women, Work and Wages, job evaluation may not be useful to resolve pay disputes if:

- --factors and weights are biased or are chosen simply to replicate the existing wage structure (and thereby capture any bias that may be present);
- --the inherent subjectivity in the process allows cultural biases about the value of work done by men and women to be reflected in the evaluation scores;
- --more than one evaluation plan is used for different sectors of the organization's workforce; and
- --the statistical procedures used to develop factors and weights are not carefully applied.

Despite these and other criticisms, the National Academy concluded that job evaluation can be used to determine whether jobs are fairly compensated and can help reduce discrimination when it exists. Numerous suggestions by pay and compensation experts have been offered to improve the use of job evaluations in pay studies. For example, comprehensive job analysis using several methods and sources of input and precise job descriptions are believed to permit more accurate determinations of job worth.

The experiences of the states in conducting pay equity studies suggest several general steps that should be followed in applying the job content approach to the federal government. They include:

--developing and articulating a specific goal (For example, one goal could be to identify any sex-based wage discrimination, but such a goal would require development of an acceptable definition of sex-based wage discrimination.),

--deciding which pay systems and jobs should be included,

--selecting a job evaluation method,

--deciding on methods for job documentation,

--deciding how the evaluation method should be implemented, and

--determining what methods should be used to compare the pay of male- and female-dominated jobs.

As in the previously-mentioned economic studies, each of these steps entails making policy decisions about the course of the analysis which will affect the nature and scope of study results. For example, if only the white- and blue-collar federal pay systems are selected for study, the results of the study would be applicable only to those systems. Similarly, in deciding on an evaluation method, any of a variety of techniques could be used, ranging from commercial or *a priori* systems to policy-capturing systems. And, the choice of the evaluation system may be contingent on the pay systems to be studied or the job content information available.

I would now like to discuss our views on how the federal government can best carry out a federal pay equity study.

FEDERAL PAY EQUITY STUDY CONSIDERATIONS

In our view, each of the described study approaches--economic and job content analysis--has value as a means for addressing the pay equity issue. Economic analysis can help measure and explain wage differentials between men and women using characteristics that affect individual productivity as well as occupational and workplace characteristics. Job content analysis, on the other hand, can provide a measure of the value of particular jobs to the federal government and compares that value to existing grade or pay levels for these jobs.

Accordingly, we believe that both approaches should be used in a federal pay equity study. The two approaches can be used either sequentially or they can be combined into a single methodology. Reliance on both the job content and economic analysis approaches can provide a clearer understanding of how federal wages are set and would be less susceptible to charges that important explanatory variables have been ignored. In carrying out our analysis of the pay equity issue, we hosted a discussion by a panel of experts. These individuals had widely differing views on whether and, if so, how a study should be done. Yet, they all generally agreed that, if a study is to be done, an approach which combines both economic analysis and job content should be pursued.

Although the panel of experts recommended a combination approach, none of the states we are aware of have conducted a pay equity study using both forms of analyses. The state of North Carolina did use a form of economic and job content analysis in a preliminary study, but it is now conducting a comprehensive pay equity study using only the job content approach. One possible reason why the states have not combined the two techniques may be that the data needed for such a study was unavailable or difficult to gather.

In any case, our work to date has underscored the complexity of the pay equity issue and suggests that continued, careful planning is needed if a federal pay equity study is to be done. Clearly, a decision to conduct a pay equity study at the federal level involves concerns of national importance on which no clear consensus has yet formed. Accordingly, those selected to carry out the study must be as objective as possible and represent many sides of the issue. Because the study may involve the use of complex job content and/or economic analyses, those involved in the study must also possess or have available a high level of technical competence in these areas. Finally, because a federal pay equity study would be a demanding and difficult undertaking, those selected to carry out the study will need sufficient resources to complete the task in a reasonable amount of time.

The experiences of the states in conducting pay equity studies and the experiences of other federal studies suggest that two groups of participants should be involved in carrying out the study--a steering committee responsible for all policy decisions and a group of technical experts to assist the steering committee.

The concept of a steering committee has particular appeal from the standpoint of objectivity, for it could be composed of a broad spectrum of individuals with differing views on the pay equity issue. Members of the committee could include experts from the fields of equal employment opportunity, compensation, classification, and economics; and representatives from the Congress, women's groups, employee organizations, and the private sector. Also, the Congress may wish to include one or more representatives from OPM on the steering committee, as it is the federal agency which would be responsible for implementing any policy changes that may arise from a pay equity study.

The steering committee could report to the Congress and could be entrusted with decisionmaking authority, subject to congressional oversight, to facilitate resolution of a number of policy issues. Those issues may include:

--deciding on a precise goal or goals for the study;

--determining what pay systems will be included in the study;

--deciding how jobs and/or job incumbents will be selected for study (e.g., simple random or stratified samples);

--deciding what general type of job evaluation will be used (policy-capturing or a priori) and, within each category, what particular system seems most appropriate; and

--determining what analytic technique will be used to interpret the study results.

To resolve these issues and to carry out the study, the steering committee will need to call upon technical experts in a variety of disciplines. Some experts may be found within the government. For example, expertise in sampling and survey design could be obtained from the Census Bureau; expertise in economics and labor markets could be drawn from the Department of Labor. Assistance could also be obtained from outside the government. Several economists and job evaluation experts have indicated to us that they would be interested in conducting analyses of wage differentials in the federal sector.

Some form of steering committee or advisory committee has been used in all of the pay equity studies that have been conducted in the states, although their roles have varied widely. In many states, though, they have been instrumental in determining the character and scope of the studies, in monitoring their progress, and in reviewing and approving study results. These committees have also helped to ensure the participation and support of a variety of interested parties--support considered crucial to the implementation of any study results.

In the state of Connecticut, for example, the state legislature required establishment of an advisory committee as part of a pilot pay equity study. This committee played a significant role in the planning and administration of the study, including selection of the consultant and refinement of the evaluation system, designation of the jobs to be evaluated, and selection of evaluation team members. In the implementation phase of the study, the advisory committee was expanded and continued its monitoring and oversight role. Committee members included representatives from the legislature, the executive branch, the state's Commission on the Status of Women, unions, and the private sector.

In Oregon, a two-tiered committee structure was used to direct the study and to assure representation of various points of view. First, a seven-member legislative task force was established by law to oversee the study. It was composed of three appointees named by the governor, and two representatives from each house of the state legislature. The task force designed the study, selected the consultant, modified the evaluation system, communicated regularly with state employees, and was responsible for recommending ways to implement the study results. To assist in carrying out its duties, the task force established both an advisory committee, representing all the parties at interest in the study, and a technical advisory committee.

On another matter, Mr. Chairman, I wanted to point out that both you and other Members of the Congress had asked us to estimate the costs that might be associated with a federal pay equity study. But, as noted in our report, it is difficult to provide specific cost estimates until certain policy decisions affecting the scope and methodology of the study are made. Some information, however, is available based on the experiences of the states, although these studies have differed in scope. For example, Minnesota's study cost $85,000 while North Carolina's cost $650,000.

One of the most significant variables that affects study cost is the extent of the data gathering task. That is, data gathering costs increase with the size of the sample and the complexity of the data gathering instrument. A federal personnel system study could include both a complex data instrument as well as a large sample. In this regard, we would like to note that some cost estimates can be obtained from the Census Bureau, which has a great deal of experience in administering large and complex questionnaires. For example, a representative of the Bureau recently told us that, in a recent study, they had administered a questionnaire to 87,000 people at a cost of about $1 million.

Also, I would like to comment on S.519, which was introduced by Senator Evans on February 25, 1985. As you know, Mr. Chairman, this bill would establish a Commission on Compensation Equity to oversee a study of the compensation and related systems in federal executive agencies.

Consistent with our report, the bill calls for a broadly representative oversight body and imposes an 18 month deadline on completion of the study. However, the bill calls for the study to use "standard job-evaluation techniques . . ." to evaluate federal positions. As I mentioned previously, we believe that any federal pay equity study also should include economic analysis.

Section 9 of the bill also calls for the Comptroller General to submit a list of study consultants to the

Commission. The Commission is to select one consultant from this list who would do the study. While we stand ready to assist the Congress in this effort, we believe it would be undesirable for our Office to participate directly in the process of selecting a study consultant. Such participation by our Office would be inconsistent with our need for independence and objectivity in any future reviews of study results or policy changes associated with study results.

Also, as noted above, the bill calls for the Commission to select one consultant. Again, however, we believe that a federal pay equity study calls for the involvement of experts in various disciplines and, accordingly, we would suggest that the Commission not be limited to selecting a single consultant.

- - - -

In conclusion, I would like to point out that the Congress soon may face a crucial decision point on the pay equity issue. A decision to proceed with a federal pay equity study may set in motion an irreversible process with far-reaching implications. Accordingly, careful consideration needs to be given to the issues of whether and, if so, what kind of pay equity study should be done at the federal level.

This concludes my prepared statement. We would be pleased to respond to any questions you may have.

GENERAL SCHEDULE

DATE	--------TOTAL-------		---------MEN--------		-------WOMEN--------		WOMEN'S SALARY AS A PERCENT OF MEN'S
	EMPLOYEES	AVERAGE SALARY	EMPLOYEES	AVERAGE SALARY	EMPLOYEES	AVERAGE SALARY	
10/31/69	1,102,793	$10,090.42	658,772	$12,005.32	444,041	$7,247.36	60.37%
10/31/70	1,098,375	10,763.99	662,250	12,760.84	436,125	7,728.79	60.57%
10/31/72	1,426,014	12,697.26	853,748	15,113.67	572,267	9,090.95	60.15%
10/31/73	1,415,190	14,043.43	841,165	16,806.66	574,025	9,994.86	59.47%
10/31/75	1,486,107	15,516.73	866,920	18,575.32	619,187	11,235.69	60.49%
10/31/77	1,516,739	17,771.02	868,665	21,411.31	648,074	12,893.47	60.22%
10/31/79	1,520,049	20,383.93	853,612	24,611.16	666,437	14,969.89	60.83%
10/31/81	1,512,837	23,113.00	823,122	27,830.00	689,715	17,483.00	62.82%
10/31/83	1,522,329	24,980.00	819,221	30,229.00	703,108	18,864.00	62.40%

==

FEDERAL WAGE SYSTEM

DATE	--------TOTAL-------		---------MEN--------		-------WOMEN--------		WOMEN'S SALARY AS A PERCENT OF MEN'S
	EMPLOYEES	AVERAGE SALARY	EMPLOYEES	AVERAGE SALARY	EMPLOYEES	AVERAGE SALARY	
10/31/70	574,928	(a)	529,673	(a)	45,255	(a)	
10/31/72	543,919	(a)	501,730	(a)	42,189	(a)	
10/31/75	517,300	$12,703.00	477,334	$12,920.00	39,966	$10,112.00	78.27%
10/31/77	498,774	15,177.00	460,681	15,422.00	38,093	12,223.00	79.26%
10/31/79	492,148	17,283.00	452,763	17,580.00	39,385	13,867.00	78.88%
10/31/81	452.069	20,044.00	412,228	20,431.00	39,841	16,041.00	78.51%
10/31/83	431,792	22,054.00	392,165	22,479.00	39,627	17,848.00	79.40%

(a) Consistent data not available

==

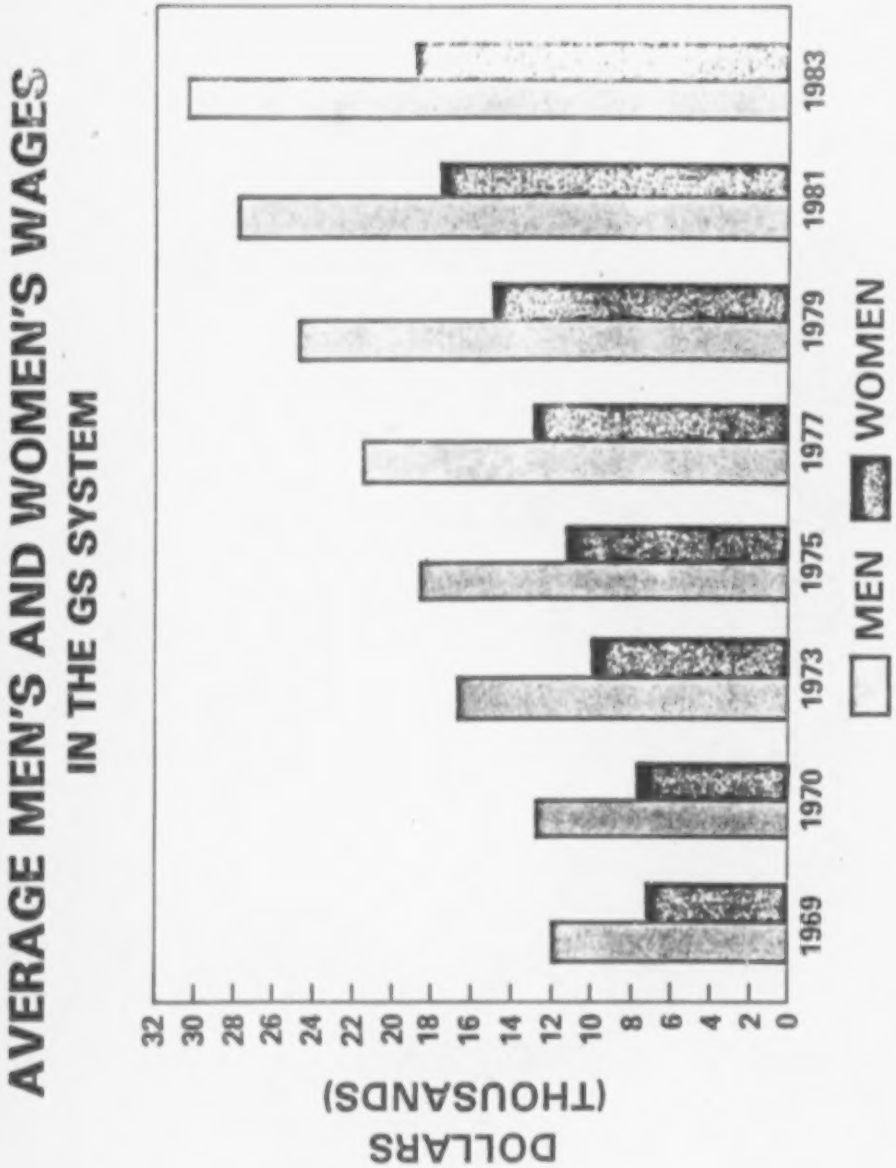
TOTAL GENERAL SCHEDULE AND FEDERAL WAGE SYSTEM

DATE	--------TOTAL-------		---------MEN--------		-------WOMEN--------		SALARY AS A PERCENT OF MEN'S
	EMPLOYEES	AVERAGE SALARY	EMPLOYEES	AVERAGE SALARY	EMPLOYEES	AVERAGE SALARY	
10/31/70	1,673,303	(a)	1,191,923	(a)	481,380	(a)	
10/31/72	1,969,933	(a)	1,355,478	(a)	614,456	(a)	
10/31/75	2,003,407	$14,790.20	1,344,254	$16,567.16	659,153	$11,167.56	67.41%
10/31/77	2,015,513	17,129.09	1,329,346	19,335.73	686,167	12,856.24	66.49%
10/31/79	2,012,197	19,625.50	1,306,375	22,174.30	705,822	14,908.35	67.23%
10/31/81	1,964,906	22,406.91	1,235,350	25,361.00	729,556	17,404.25	68.63%
10/31/83	1,954,121	24,333.46	1,211,386	27,720.07	742,735	18,809.79	67.86%

(a) Consistent data not available

Source: Office of Personnel Management

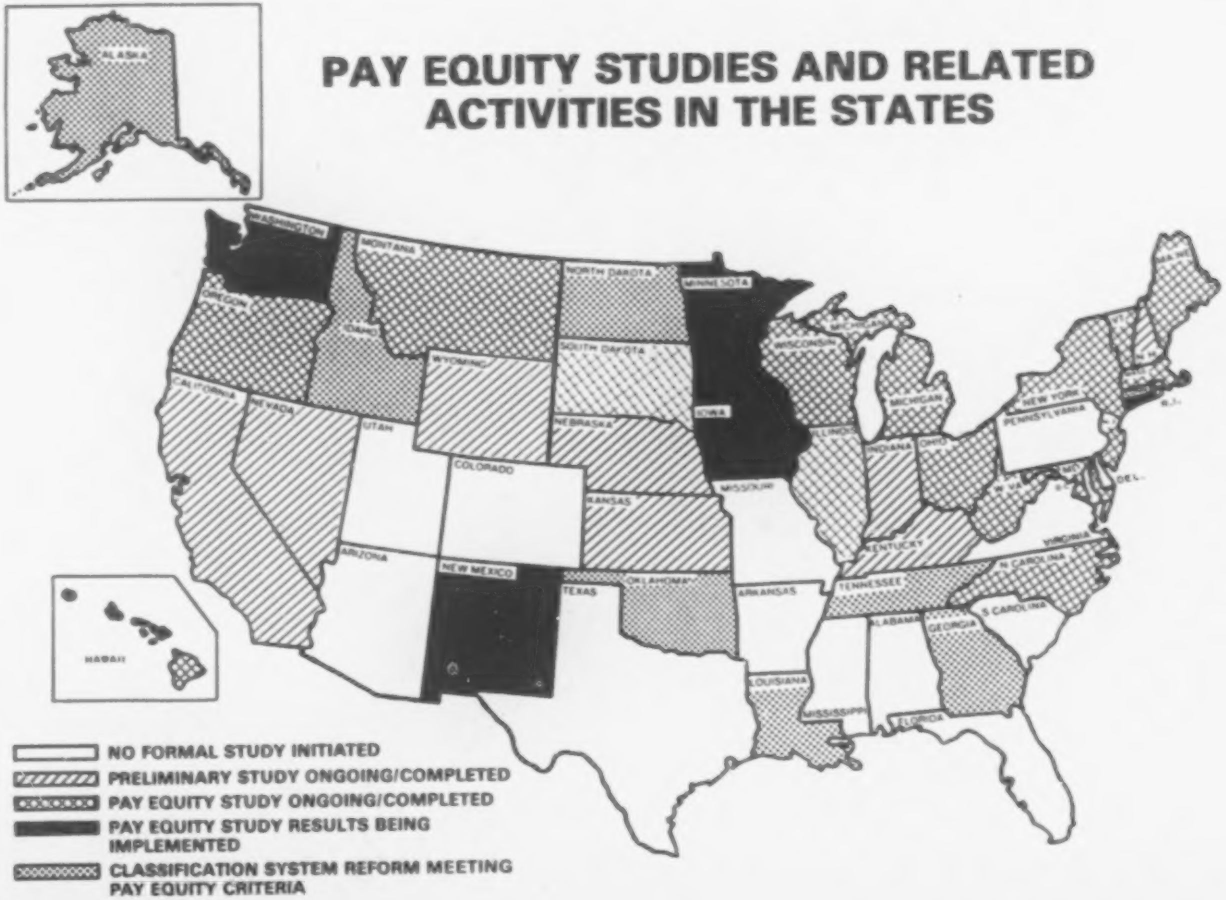
CHART I



AVERAGE MEN'S AND WOMEN'S WAGES IN THE GS SYSTEM

CHART II

PAY EQUITY STUDIES AND RELATED ACTIVITIES IN THE STATES



Senator Stevens. Now we will turn to the U.S. Chamber of Commerce witnesses, Virginia Lamp and Mark de Bernardo. Good morning.

TESTIMONY OF VIRGINIA B. LAMP, LABOR RELATIONS ATTORNEY, U.S. CHAMBER OF COMMERCE, ACCOMPANIED BY MARK A. DE BERNARDO, MANAGER OF LABOR LAW

Ms. Lamp. Good morning, Senator. In the interest of time, I would ask permission that my entire statement be entered for the record. I would summarize those comments and look forward to your questions following that testimony.

Senator Stevens. I have no objection to that, but I want you to know that your comments under section 4 of your statement are of great interest to us. I hope that you will not breeze over that.

Ms. Lamp. You bet. I won't do that.

My name is Virginia Lamp, labor relations attorney for the U.S. Chamber of Commerce. Accompanying me today is Mark A. de Bernardo, manager of labor law for the U.S. Chamber.

The chamber appreciates the opportunity to testify before this subcommittee and express our opposition to S. 519, the Federal Employee Anti-Sex Discrimination in Compensation Act of 1985, as well as comment on the General Accounting Office's report released on March 1, 1985. The comparable worth issue is of major importance to the business community.

The U.S. Chamber of Commerce strongly favors equal pay for equal work and equality of opportunity. The chamber recognizes that pay equity is not only appropriate; it is critically important to employers. Good business practice requires that wages be set fairly and competitively in order to maintain a dependable, productive, and committed work force.

Furthermore, the chamber has been encouraged by, supportive of, and a participant in the tremendous progress women have made in the labor market in recent years. A major factor in this progress has been the business community's participation—often voluntary and beyond what is statutorily required—in affirmative action programs.

While there is no question that a wage gap exists between male and female workers, the cause of this wage gap and if, how, and by whom the disparity should be addressed, are highly complex issues in need of a complete and thoughtful examination.

Absent such a thorough examination, comparable-worth legislation may be enacted which would have major negative ramifications for the Government, taxpayers, the business community, and employees, male and female alike.

In terms of comparable worth, we feel comparable worth is a theory that holds that jobs have intrinsic, measurable values and dictates that salaries be based solely on those determined values rather than on market considerations.

The chamber disagrees with that. All jobs do not have fixed, intrinsic values, and all jobs cannot be compared and ranked by the same criteria, particularly when market factors are excluded, into a single classification system.

Worth in itself is an illusive concept, subject to changes based on competition, consumer preferences, individual merit or experience, new technology, or other market forces. Two jobs may have comparable characteristics, but they do not necessarily have comparable values. Our rewards typically are determined by the community's evaluation of what we produce.

On the other hand, when those in positions of authority dislike the results of market preferences, they will often see a need to correct market imperfections through legislative mandate. Comparable worth is such a case. Because there is presumed to be someone who can more fairly set wages and distribute income, the freedom to confer value through market choices is to be taken away. However, we have not seen the evidence of what that process is and evidence of whether that process will be more fair or more efficient or compatible with the American society which values individual freedom.

The free market works by processing information on the scarcity of talents, the preferences of individuals, the demands of consumers, and the availability and cost of other resources and technologies. Market wages must reflect a balance between what employers are willing to pay for workers' services and how much is needed to induce workers to supply the labor for particular jobs. Only to the extent that the market reflects the societal attitudes and biases that may influence employee choice in selecting and performing a job can the market be said to be discriminating.

The market is influenced by numerous factors that exist outside the employment context. On pages 17 and 18 of our testimony we list a number of factors which may and do account for a significant portion of the wage gap.

Advocates of comparable worth argue that the law should be broadened to make employers responsible for the marketplace effects that result in lower wages for certain female-dominated jobs, regardless of whether the employer created those conditions.

Job evaluations have been used by employers for decades; job evaluations, that is, of varying degrees of sophistication. Job evaluations are typically valuable management tools, designed and intended for use in a consensual context with sufficient flexibility to accommodate an organization's needs and changing circumstances. Job evaluations have never been intended to operate outside of or apart from market considerations.

Employers cannot ignore labor costs in a competitive economy. Employers must pay whatever wages workers with essential skills command. Undoubtedly, employers are swayed by considerations of internal fairness, but those are meaningless if looked at out of context. If a business's economic viability is at stake, if the labor costs are such as to convince an employer to close a business or not to open a business, the costs are borne in lost jobs and lost opportunities.

In reference to section 4 of our testimony, Senator, equal opportunity is the law. Equal pay for equal work is the law. And nondiscrimination is the law. But comparable worth is not the law. Any bill which explicitly or implicitly seeks to define discrimination on the basis of the comparative value of different jobs represents a significant change in law.

The ninth circuit recognized this in the *Spaulding* case. It refused to accept an interpretation of title VII of the Civil Rights Act which presumed the existence of discrimination whenever employees of different sexes received different compensation for "work of differing skills that may subjectively be of equal value to the employer but does not command an equal price in the labor market."

The court reiterated that the Federal policy embodied in title VII is that individuals are entitled to equal opportunities in the job market but not equal results.

To the contrary, S. 519 appears to be drafted as a proposal that would seek to guarantee equal results by ignoring the existence of legitimate market factors such as supply and demand.

In discussing the labor market, we should note that the law does not permit an employer to pay a woman less because she is a woman or because she is willing to do the job for less pay than the employer would pay a man for the same work. But the law does allow an employer to pay bookkeepers less than truck drivers, for example, so long as the difference in pay is because the jobs and the market for them are different and not because the sex of the workers is different.

The chamber fully supports the equal opportunity guarantee reflected in our existing law rather than the equal results approach suggested in other legislation.

In terms of the GAO report, GAO observed that pay equity is a very complex issue and that if a study is to be done, important policy decisions must be made. As stated earlier, GAO also interpreted the AFSCME case to mean that an employer who commissions a pay equity study for informational purposes may be legally bound by the results even if the employer lacks confidence in the study's methodology.

In its report, GAO referenced Congress to two other GAO reports which contained pertinent data and information related to this subcommittee's interest in pay equity for women. In one report GAO provides an overview of the extensive and ongoing methods by which all Federal wages are classified and set currently.

This report provides ample evidence that: One, the Federal Government already is and has been conducting extensive job evaluations. Two, that the value or worth of particular positions and individuals within job classifications is being continually assessed. And three, there is no evidence that gender discrimination plays a part in that ongoing process.

Returning to the GAO report which is the primary focus of these hearings, and then I will sum up, the following observations are highly significant.

One, GAO made it clear from the outset that what is not clear is why the wage gap exists and whether discrimination plays a part.

Two, GAO recognized that job evaluations are inherently subjective.

Three, GAO reminded Congress of the fact that ongoing job evaluations have been and are being used within the Federal Government.

Four, GAO recognized that market factors play a role in most job evaluation systems.

Five, GAO recognized that major disadvantages to any job content approach include the following: the inability of job evaluations to measure the worth of particular jobs; the inherent failure to acknowledge explanations other than discrimination, which may account for wage disparaties between men and women; and the necessary focusing on the value of jobs as opposed to the value of individual workers.

Six, GAO touched on a myriad of practical problems which performing a study and implementing the results could bring up.

Seven, GAO recognized that a new definition of discrimination lies within this entire debate and it distanced itself from the idea of this study being in any way related to sex-based wage discrimination.

Finally, GAO was not given the options of exploring why a study should not be conducted. However, it took the liberty to discuss the legal uncertainties currently existing pending the *AFSCME* v. *State of Washington* appeal.

As I indicated earlier, an employer who commissions a pay equity study for informational purposes may be legally bound by the results.

In summary, the solution to occupational clustering of women does not lie in forcing employers to pay higher wages for what has traditionally been called women's work. The goal of equal employment opportunity should be to create complete job mobility for women, giving women access to all jobs, including the highest paying, traditionally male jobs, and to strike from our workplaces the concept of men's jobs and women's jobs.

Comparable worth would do precisely the opposite. It would perpetuate sex-segregated jobs. By artificially raising the pay for traditionally women's jobs to a level above the market rate, comparable worth would create a perpetual inducement to women now in those jobs to remain in them and would induce new generations of women to continue to limit their career aspirations to traditional women's jobs, even as the number of those jobs shrinks because they have been arbitrarily over-valued by legislative fiat.

What is needed instead is a vigorous effort to eliminate all artificial barriers that have limited women's employment options.

The chamber urges Congress and the subcommittee to reject the comparable worth concept, particularly when cloaked as a mere study to determine equity.

I would be more than willing to answer any of your questions.

Senator Stevens. I noticed in the beginning portion of your statement where you say that these issues are highly complex and in need of a complete and thoughtful examination. Yet you reject the concept that the examination should take place.

Ms. Lamp. It is just the method of how you go about studying it, Senator. We have no problems with the Congress taking up trying to find out what portion of the wage gap is attributable to discrimination and whether existing laws can or cannot effectively deal with that discrimination occurring in the wage market. Our problem comes in the drafting of legislation and the legal uncertainties right now surrounding this whole issue of comparable worth.

The concept of comparable worth we feel is a flawed one. To go down the road and do a study of the Federal Government in any way endorsing that concept is something that would have serious implications both legally and for the private sector.

Senator **STEVENS**. There seem to be three concepts here: comparable worth, pay equity, and equal pay. You have stated the position on two. What is the chamber's position on pay equity?

Ms. **LAMP**. The Chamber is for pay equity. We always say that pay equity is like beauty; it is in the eye of the beholder.

Any employer tries to achieve pay equity in his or her work force. The idea of comparable worth is a different one. It is, as I stated, the idea that jobs have intrinsic value that can be measured by job evaluators and that wages should be set according to that rather than the marketplace.

Senator **STEVENS**. I understand your position about the marketplace. Many of our colleagues have raised the same questions that you raise. We all come from varied backgrounds, but most of us have had some exposure to the problems of the marketplace.

But the problems of the Federal Government, as an employer, do not involve the marketplace directly. They only involve the marketplace to the extent that we get into comparability between Federal employment and private employment, which current law requires.

Now, how do you expect that we are to determine whether there is discrimination in Federal employment unless we have the study that Senator Evans wants?

Ms. **LAMP**. I guess that is a difficult question because there are a lot of issues wrapped up in that question. The first one I would want to take out is: What is the definition of discrimination we are talking about? Is it just because there are a number of women clustered in a number of traditionally female jobs which happen to be low paying jobs, is that "discrimination" to the Congress? If it is, that is a redefinition of discrimination.

Senator **STEVENS**. You heard the proponents. Ms. Oakar said she is interested in eliminating sex-based discrimination. She takes the position, as you point out, that the evidence of pay disparity is proof that there is some discrimination, and the GAO study would indicate that they believe that might also be the case. They don't take the position as strongly. But as I understand their study, they believe that it is possible that a portion of the disparity is in fact the result of discrimination. You have indicated that the chamber is not opposed to taking action to eliminate the pay inequity that is based on sex discrimination. Is that right?

Ms. **LAMP**. Sure.

Senator **STEVENS**. That is the law today anyway; isn't it?

Ms. **LAMP**. Yes.

Senator **STEVENS**. Why then does the chamber oppose the study and the commission that Senator Evans' bill would authorize if it does not mandate specific action at this time?

Ms. **LAMP**. The most important answer to your question is that as GAO recognized themselves, and as Senator Evans indicated, the cause of the problem in Washington was when you fail to implement the study, the legal uncertainties right now surrounding this question substantially increase the risk that you have to fully implement that study, particularly as that bill is drafted I would say on the House side. Congresswoman Oakar's legislation is drafted in such a way as to ensure that full implementation of comparable worth must be done following the study's results.

Senator STEVENS. I have to say to you, I understand you. That is why we are on the course we are on. We want to try to avoid the implication that the courts can take this issue away from Congress before we have finally acted.

They might be able to disagree with you as to the results, but I think Senator Cranston and Senator Evans would agree that we don't want to see the courts taking jurisdiction on this issue and in effect legislating before the Congress has had a chance to completely study it and determine whether it feels additional legislation is required.

Is that improperly stated?

Senator EVANS. I think that is perfectly proper. I think we are in infinitely greater danger by doing nothing and taking a chance the courts will do something.

Senator STEVENS. That reflects my opinion, too.

I interrupted you, pardon me.

Ms. LAMP. In response to that comment, there haven't been any cases that I know of where an employer who is now not discriminating, as discrimination has been defined up to this point, has been brought into court because of a failure to do a study such as envisioned by this legislation. The only case that people talk about when they say that the Federal Government is setting itself up for a lawsuit, if it does not do a study, is the *Charley Brothers* case, which was a case of intentional discrimination. That employer segregated his employee work force into male and female job classifications, and there was all sorts of evidence that brought that employer into the courtroom to defend what he was doing. He was wrong and he got caught.

The Federal Government doesn't have the same kind of evidence that shows widespread discrimination that would bring the Government into court. This study, be it as innocuous as you want to phrase it, will probably bring the Federal Government into court.

Senator STEVENS. Senator Evans.

Senator EVANS. I have heard a lot of things. That last statement I simply cannot understand. I wouldn't be in favor of a study that was innocuous. It certainly is far from that. I certainly don't see why conducting a study and finding out what ought to be done or what we believe ought to be done would necessarily bring you into court.

I think it is time we quit talking about legal uncertainties and talk about moral certainties. We ought to do what is right, not what we can get away with.

I am saddened that the chamber of commerce always seems to be in favor of the status quo. You talk in your testimony about your enthusiasm for equal pay for equal work and that that was a fine accomplishment by the Congress. Let me read you the chamber of commerce's testimony during the time that that bill was in front of Congress.

Representative Edith Green asked Mr. Williams Miller, testifying on behalf of the chamber, the following question. "You say in your plant the starting salaries for women are $50 to $100 below men." He said, "That is what the marketplace has placed as the value between the difference of men and women" Question, "No woman has the chance of being a leader in your plant?" Mr. Miller said, "I have yet to see a women in a manufacturing establishment who has been able to rise to the top in a manufacturing job. It is because men in general like to be supervised by men rather than women." He went on to say, "The Equal Pay Act" which you now embrace so heartily, "the passage of this legislation would discriminate against women, reduce their job opportunities, particularly in the field mostly dominated by men, because employers, in order to reduce competitive costs and potential problems under the new laws, would hire only men."

Now, in case the chamber hasn't noticed, in the last 20 years, disaster hasn't struck. The market didn't crash. New opportunities did open up at better wages for women. Of course, they have changed their mind. I suspect that 20 years from now we will read this testimony and wonder why the chamber today is taking the position it is, while much of the testimony and much of your report isn't really on the issue directly in front of us; that is, the GAO report on whether to conduct the study within the Federal Government.

Let me ask a couple of questions. First, you say that comparable worth is a flawed concept, which is interesting since my first association with the whole idea of comparable worth came when as Governor I attempted to find a better means of aligning executive pay within the State and asked leaders of private industry in my own State how to do it. They brought to me comparable worth as a way of doing it. And it is job evaluation, more precisely the means of job evaluation and job relationship that we are talking about now.

You say that you oppose comparable worth because job evaluations cannot be successfully implemented. I just wonder how you can say that when survey after survey shows that 75 percent of large organizations, 60 percent of small organizations, over two-thirds of all the employees in the country are covered by one form or another of job evaluation systems.

Ms. LAMP. The answer to that is that people define job evaluations with just as much variance as they define pay equity. There are varying degrees of sophistication in job evaluations.

It is true that employers use them in the private sector in a consensual format, as I indicated. They never factor the marketplace out of their considerations, and they are not done to mandate what a wage must be following that job evaluation. They are done to help an employer make a decision on the internal fairness of wages and the external competitiveness of what they must pay in terms of their employees.

Senator EVANS. Do you see any place in the study that is suggested here that the marketplace would be ignored?

Ms. LAMP. I understand that you are willing to amend the study bill you have introduced to include a market-based analysis. I think that is better than not——

Senator EVANS. Economic analysis, not a market analysis.

Ms. LAMP. OK, economic analysis. We think it is a flawed concept, that to do the study, even if you do a two-pronged study, you are still buying off on a flawed concept. You are doing twice as many things as you need to do in the first place. Let me give an example of the difficulties such a study could raise.

In the State of Wisconsin, some of the problems they got into with their comparable worth pay scheme were decisions like this: 67 percent of a job category called Institute Aides were female. If the State hired two more female institute aides, under a comparable worth scheme, it would cost the State $595,000.

Also, 70 percent of the nurse's assistant three job classification were female. To implement comparable worth, the State could pay all those positions $3,626 more or they could hire one male or they could fire two females to avoid paying the added cost, so as to save the State $377,000.

You get into all sorts of problems with the statistical use of numbers and the categorization of jobs. What is left out is the individual in that job, and you are calling what is a social phenomenon discrimination.

Senator **Evans**. I suppose you can gin up all sorts of ludicrous results, and I could sit here and we could spend a lot of time talking about the imperfections and aberrations and abuses of the marketplace itself. But where in the proposed study would you come to those kinds of conclusions?

I think the inconsistency of your basic statement is that you say it is a complex issue, it needs further study, it requires all of those things; but then you are opposed to the Federal Government even studying its own work force, which is all this bill would do, trying to determine if there is a better method of setting our internal wage alignments than what we do now, which is to attempt to reflect the market place with all of its imperfections and aberrations and difficulties, which I could spend a lot of time talking about.

Senator **Stevens**. You say if they had added people under their formula, the Wisconsin formula, they would not have had to implement a pay change. As I understand their situation, they put into effect a program which mandated that result on the basis of the study they had taken.

We are just one step ahead of that. We are trying to decide whether we should have a comprehensive study.

Ms. **Lamp**. You are right. Senator Evans said in his opening testimony that the problem in Washington was that they failed to follow through on the study. That is what put the State of Washington into litigation over the issue. That is why the chamber is here testifying today, hoping that the Federal Government doesn't take that first step into what GAO just indicated that they thought was "an irreversible process of significant proportions."

Senator **Evans**. I think that is an inaccurate perception of what GAO said. They said it might be. They didn't say it was an irreversible step. And in fact they pointed out in their study evidence on both sides of that issue, whether it was or wasn't an irreversible step, and what the courts have said on both sides of that issue, which I am sure you are very much aware of.

But it seems to me it ought to be an irreversible step. You say don't get into a study because the study might lead to an irreversible conclusion that would change the wage alignments of the Federal Government after a study which we are attempting to make as comprehensive, as unbiased, as professional as we can. If the end result of that study indicates that we should have a different internal wage-setting alignment in the Federal Government, of course we ought to proceed ahead and implement it.

What you are saying is that, for whatever reasons, I am not quite sure, we shouldn't even conduct the study because it might show there are some inequities and the inequities then might have to be corrected. Why shouldn't they be corrected?

Ms. LAMP. That is not at all what we are testifying about today. In fact, studies are fine. What's wrong is when the studies are flawed from the beginning to, No. 1, embrace the concept of comparable worth.

I would like to respond personally to whether the Chamber of Commerce is doing the right thing in regard to women in this instance. I don't think comparable worth is in the best interests of women, even though it is perceived to be a women's issue right now. I say that because what comparable worth would do is, No. 1, not recognize the fact that there is tremendous progress of women right now moving into nontraditional fields. And all comparable worth would do would be to perpetuate what jobs are assigned to women and jobs which are assigned to men. It would perpetuate a gender consciousness, as opposed to a gender blindness, the same way that quotas do in terms of races.

I don't think it is in the best interest of women. I don't think it is in the best interest of union wage negotiation, although there are a number of unions who don't share my view on that.

Senator EVANS. There certainly are.

Ms. LAMP. In terms of the U.S. Chamber of Commerce, I think we are a little bit ahead of the times. My colleague with me would like to respond to the chamber's interest with the Equal Pay Act.

Mr. DE BERNARDO. I would add to what Virginia said in that we agree that further study of the issue is needed. We agree there are an awful lot of issues that are presented that have not been gone into in great depth and a lot of questions which are unresolved.

What we are concerned about is that the study that is called for in legislation is a misnomer, that it is not a study. Not necessarily because of the views of the proponents of the legislation, but because of what will happen, frankly, what the chairman said, what Mr. Stevens said earlier, in that this would act as a fuse to an explosive. The explosive would be litigation brought by private plaintiffs.

That is our concern. Our concern is this study sets it up for, in effect, Congress being usurped in terms of its authority on comparable worth; and in fact yes, sir, you will have implementation, this will get the ball rolling.

In terms of what Virginia said in regard to your earlier statement, Senator, on the historical perspective, I appreciate that. I do not know who Mr. Miller was. I do not know what his position was 25 years ago.

Senator EVANS. I can say that was their position. I read the record very carefully.

Mr. DE BERNARDO. It is certainly conceivable the position was wrong or the forecast was wrong. I do not think that is the first time or last time. But I do not think that is only symptomatic of the chamber's position. I would assume virtually everyone in this room has had views in the past which have been reviewed. Certainly Congress in the past has passed legislation which I think all of us would agree has been inappropriate.

What I do know is what our position is now. I do know a lot of changes have occurred in the last 20 to 25 years and that current law in our estimation addresses the problems of discrimination appropriately. Remedies are available.

We will not concede that the only cause or, for that matter, the major cause of the wage gap is because of discrimination by employers or by the Government itself. I think it is a very complex issue. There are a lot of reasons why the wage gap exists. Yes, discrimination may be one of them. But in the current environment and the current economy in our society, we are convinced that the laws which do exist address the existing problems appropriately.

Senator EVANS. I couldn't find it anywhere in your testimony, but could either one of you speak specifically and directly to the wording and the proposal in S. 519 as to the study and tell me where you think that it is a bad thing to do and why?

Ms. LAMP. I don't have S. 519 in front of me. I would appreciate the opportunity to respond to that in writing for the record.

Senator EVANS. Have you read S. 519?

Ms. LAMP. Yes, I have.

Senator EVANS. You don't remember much of it?

Ms. LAMP. I am remembering the House bill a lot better than the Senate bill.

Senator EVANS. But you oppose S. 519.

Ms. LAMP. Yes, sir.

Senator EVANS. But you don't remember much about it.

Ms. LAMP. Well, I understand it is a study bill of the Federal Government which endorses the concept of comparable worth.

Senator STEVENS. No.

Senator EVANS. That is incorrect.

Ms. LAMP. I understand the title of it is something to do with discrimination.

Senator EVANS. Certainly. The title is the Federal Employee Anti-Sex Discrimination in Compensation Act. Do you believe in discrimination in compensation based on sex?

Ms. LAMP. I am sorry, could you repeat the question.

Senator EVANS. Well, the title is the Federal Employee Anti-Sex Discrimination in Compensation Act. Do you find anything wrong with that as a concept?

Ms. LAMP. No.

Senator EVANS. Then what is wrong with the title?

Ms. LAMP. The title and the study itself, when put hand in hand, leads one to believe that the study is going to ferret out what portion of the wage gap is attributable to discrimination; and remedy it.

Senator EVANS. Yes. And?

Ms. LAMP. And the GAO study indicated that that is not what a study is able to do.

Senator EVANS. I don't think they said that at all. But to the degree that they ferret out, as you say, discrimination which is based on sex, you think then it is inappropriate to correct that?

Ms. LAMP. I think if you can identify discrimination occurring in the Federal work force, it ought to be addressed effectively and stopped. I think existing law encompassing the definition of discrimination as it has been used by the courts up to now is adequate to do that.

Senator EVANS. I am not suggesting new law. We are suggesting a study in order to determine whether Federal jobs are appropriately classified or graded in pay and whether the wage-setting practices in executive agencies of the U.S. Government are in compliance with applicable laws and regulations prohibiting sex-based wage discrimination and Federal employment policies and practices.

We are not talking about new law. We are talking about a study to simply determine whether current laws are accurately being carried out insofar as wages within the Federal establishment are concerned.

Senator STEVENS. Senator, I think to be fair to the witness, the study that is mandated is to determine whether there are occupations where the rates of pay payable for positions held predominantly by female employees are lower than rates of pay payable for positions held predominantly by male employees, although the work performed in each instance involves skills, effort, responsibilities, qualifications and working conditions which, although not identical, are equivalent in totality.

That really is a statement of comparable worth. So although we say it is based on sex discrimination, the study itself is a comparable worth study.

Senator EVANS. Indeed it is. To determine what portion, if any, of the obvious differential between occupations held primarily by women or men is based on sex discrimination. I think that the witness here has already testified that it is a complex issue and some portion of the difference may well be from other factors. The economic analysis which we would like to add to the study does that.

Senator STEVENS. It would be my intention to add to the task of the commission that basic issue.

Senator EVANS. That comes out of the economic analysis.

Senator STEVENS. And determine the extent to which those differences are related to discrimination. I think that is the problem that we are faced with. I think Ms. Oakar stated that, too. She wants to determine what is based on discrimination. We need to do that.

I would ask, Ms. Lamp, that you review that and give us your ideas as to how that study, which is a comparable worth study, might then be brought back into the focus of sex-based wage discrimination.

Ms. LAMP. That is a key issue, Senator. I would refer in this whole debate to page 10 of the GAO report, and let me just read one sentence from the report. It says, "Because neither the Equal Employment Opportunity Commission nor the courts have defined what constitutes sex-based wage discrimination"—and they mean in the context as it is being discussed in this whole comparable worth debate—"our report does not describe study methodologies which specifically address the issue of sex-based wage discrimination."

They distance themselves from this study that is being envisioned in the House version or the Senate version of Congress being in any way related to discrimination. Job evaluations can't discover what portion is attributable to discrimination. That is not a function of traditional job evaluations.

Senator EVANS. I think it is excessive to say they distance themselves from the study. I think quite the contrary. They are very supportive as their testimony indicated.

I would suggest, Mr. Chairman, that to the degree we are talking about sex-based wage discrimination, while neither the Equal Employment Opportunity Commission or the courts may have done that yet, I would much prefer that we take a crack at it rather than the courts. Isn't that precisely one of the arenas where Congress itself ought to work?

Ms. LAMP. There is no doubt we would prefer that Congress be very clear in what it means by sex-based wage discrimination.

Senator EVANS. How can we do that unless we study it first?

Ms. LAMP. The way to do it is for, first of all, the Congress to say do they think it is proof of discrimination when women are clustered in a number of jobs which happen to be low paying. Is that per se discrimination? And should an employer be penalized because a female comes into his or her workforce and chooses a traditionally female job? Is that discrimination?

Senator EVANS. I think that is what we will have to find out. When you say an employer, I think that that indicates somehow your fear that a national wage board is going to apply to every employer in the country, and that is far from anything that is involved in this study. In fact, my preference would be to let the famous market place be the determinant.

If we come through with a study, and if the results of the study change some of the internal alignments in the Federal Government, and if the result of that is that some of what now are basically female held occupations are substantially increased in their pay, I think two things will happen. Rather than clustering women or having engendered women's occupations, you may very well attract males as well as females to those job classifications. More importantly, other companies may choose to do what they want. If the best applicants and the best people choose to come to work for the Federal Government because they get paid more, let the marketplace determine competition. I suspect there will be some reaction. But isn't that what the marketplace is all about?

Ms. LAMP. There is no doubt that employers with more money in their pockets to pay higher wages for their employees provide a significant motivation for drawing employees toward that employer. I thought that the Federal deficit was such an issue that Congress is looking for ways to reduce the Federal budget. Apparently this is one of those issues——

Senator EVANS. You are entering dangerous territory which is outside this committee's responsibilities. But I would suggest there are two ways to correct a deficit. One is cutting expenses. The other is raising taxes.

When I look at the records and find that I paid more in Federal income taxes in the last 3 years than American Telephone and Telegraph and they earn $13⅞₁₀ billion in profits, that may suggest a way to reduce the deficit. But I don't think the Chamber would endorse that. [Laughter.]

Thank you, Mr. Chairman.

Senator STEVENS. Thank you, Senator. Miss Lamp, I want to congratulate you for the time you obviously spent on the issue. I don't wish to embarrass you, but I would hope the commission might retain someone with your talents because I think there will be a commission. I think the Chamber would be well advised to give us some suggestions as to how this bill might come in line with a study that your first comment referred to, very complex issues and requiring a thorough study. That is what we want, rather than to mandate a conclusion. We want to mandate that thorough study you said would be required if there was to be some consideration of how to eliminate sex-based discrimination.

I think that we need to all get back to the concept that we are talking ultimately about sex-based discrimination and not trying to eliminate disparaties of wages caused by market place conditions; which I take means supply and demand to a certain extent affects the Federal Government as well as anyone else. And certainly the budget considerations you mentioned, although the Senator is right, they are not within our total responsibilities here, will be the predominant consideration when the final action is taken. They should not be the predominant consideration in terms of trying to determine whether there is in fact sex-based discrimination.

I appreciate your help, too, Mr. de Bernardo. I look forward to getting your responses. We have another copy of the bill here for you, if you do want to have it.

Ms. LAMP. Thank you very much.

Senator STEVENS. Thank you very much.

[Ms. Lamp's prepared statement, with attachments, and responses to a written question follow:]

LET'S REBUILD, AMERICA
IN THE 80's

Statement of the Chamber of Commerce of the United States

ON: COMPARABLE WORTH

TO: SUBCOMMITTEE ON POST OFFICE, CIVIL SERVICE AND GENERAL SERVICES OF THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE

BY: VIRGINIA B. LAMP

DATE: MAY 22, 1985

The Chamber's mission is to advance human progress through an economic,
political and social system based on individual freedom,
incentive, initiative, opportunity and responsibility.

TABLE OF CONTENTS

Page

I. STATEMENT OF INTEREST 1

II. BACKGROUND AND SUMMARY OF POSITION 2

III. COMMENTS ON THE GAO REPORT 4

IV. S. 519 IS MORE THAN "A STUDY" AND REPRESENTS A SIGNIFICANT CHANGE IN LAW . 7

V. RAMIFICATIONS OF COMPARABLE WORTH 11

- A. A New Definition of Discrimination 11
- B. Cost of Comparable Worth in the Federal Government 12
- C. Economic Consequences of Comparable Worth 13
- D. Comparable Worth: Confers Unrealistic Status to Job Evaluations . . . 14
- E. Distorts Pay Equity Concept 14

VI. FOUR KEY ISSUES DRIVING THE COMPARABLE WORTH DEBATE 14

- A. Average Wage Gap Statistics 14
  - 1. Statistical Analysis Can Be Misleading 14
  - 2. Women Have Entered the Labor Force at Record Rates 15
  - 3. Wage Gap is Narrowing Without Comparable Worth 17
  - 4. Wage Disparity Factors 17
- B. Occupational Clustering 18
  Women are Moving Into Nontraditional Fields at Record Rates 18
- C. Gender Discrimination 20
  - 1. Existing Law is Broad and Effective 20
  - 2. Congress, National Academy of Sciences, and U.S. Civil Rights Commission Have Rejected Comparable Worth 21
  - 3. The Market Does Not Discriminate Against Women 23
  - 4. Comparable Worth is Preferential Treatment for Groups, Not Equal Opportunity For Individuals 24
- D. Job Evaluations 25
  - 1. "Worth" is Not What Determines Wages 25
  - 2. The Role of Job Evaulations 26

VII. RECOMMENDATIONS 27

VIII SUMMARY 28

Appendix 1 - Data on Trends of Women Within the Federal Government

Appendix 2 - Practical Problems/Decisions for a Federal Comparable Worth "Study"

STATEMENT
on
COMPARABLE WORTH
before the
SUBCOMMITTEE ON POST OFFICE, CIVIL SERVICE, AND GENERAL SERVICES
of the
SENATE GOVERNMENTAL AFFAIRS COMMITTEE
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
Virginia B. Lamp
May 22, 1985

I. STATEMENT OF INTEREST

I am Virginia B. Lamp, Labor Relations Attorney for the Chamber of Commerce of the United States. Accompanying me today is Mark A. de Bernardo, Manager of Labor Law for the U.S. Chamber.

The Chamber appreciates the opportunity to testify before this Subcommittee and express our opposition to S. 519, The Federal Employee Anti-Sex Discrimination in Compensation Act of 1985, as well as comment on the General Accounting Office's report released on March 1, 1985. The comparable worth issue is of major importance to the business community.

The U.S. Chamber of Commerce strongly favors "equal pay for equal work" and "equality of opportunity." The Chamber recognizes that "pay equity" is not only appropriate and equitable; it is critically important to employers. Good business practice requires that wages be set fairly and competitively in order to maintain a dependable, productive and committed work force.

Furthermore, the Chamber has been encouraged by, supportive of, and a participant in the tremendous progress women have made in the labor market in recent years. A major factor in this progress has been the business community's participation -- often voluntary and beyond what is statutorily required -- in affirmative action programs.

II. BACKGROUND AND SUMMARY OF POSITION

The U.S. Chamber's policy on comparable worth is:

> While the U.S. Chamber supports the concept of pay equity, it opposes any effort to implement into the work force by government mandate the concept of "comparable worth," which would unnecessarily disrupt the labor market.
>
> The Chamber opposes government wage setting based on comparable worth theories, because such job evaluation processes cannot be successfully implemented. Such wage controls would have an adverse impact on employment, and worth of a job and its wage evaluation must be determined by the concerned employees and employers acting in the marketplace.[1]

Comparable worth is a theory that holds that jobs have intrinsic, measurable values and dictates that salaries be based solely on those determined values, rather than on market considerations.

The Chamber disagrees: all jobs do not have fixed, intrinsic values, and all jobs cannot be compared and ranked by the same criteria -- particularly when market factors are excluded -- into a single classification system.

Comparable worth advocates argue that disparities in income between men and women and the heavy concentration of women in certain occupations are proof of sex discrimination. While there is no question that a wage gap exists between male and female workers, the cause of this wage gap and if, how, and by whom the disparity should be addressed are highly complex issues in need of a complete and thoughtful examination. Absent such a thorough examination, comparable worth legislation might be enacted which will have major negative ramifications for the government, taxpayers, the business community and employees — male and female employees alike.

The fundamental issues underlying the comparable worth debate are the following:

- whether and to what extent discrimination is an identifiable cause of the wage gap;

---

[1] Policy Declarations, adopted by the Chamber of Commerce of the United States, June 13, 1984.

- whether and to what extent women are making progress in the labor market;
- whether existing law -- Title VII of the Civil Rights Act of 1964 and The Equal Pay Act -- is addressing adequately and is capable of addressing adequately discrimination occurring in the work force;
- whether developing a method of setting wages and comparing the worth of substantially different jobs without taking market factors into account are appropriate;
- whether, in fact, developing and implementing such a wage-setting plan in an equitable and workable manner is possible; and
- whether the social and economic costs of comparable worth justify its adoption to eliminate or to close the wage gap.

As a proposed remedy to the wage gap, comparable worth is ill-conceived, unworkable, expensive and, in all likelihood, counterproductive in the long run to the multiple interests affected, including the interests of female workers. Comparable worth is based on the following:

- a fundamental misunderstanding of the role of markets and of wages in our economy;
- a failure to appreciate the extensive legal remedies for gender discrimination which currently exist;
- a near-sightedness with regard to the record rates at which women -- particularly young women -- are entering into nontraditional employment fields.

Additionally, the comparable worth legislation would embrace a radical new theory of what constitutes "discrimination."

The Chamber wishes to call the following to the attention of this Subcommittee:

- Except for gross wage gap statistics, evidence does not exist of widespread systemic, gender discrimination which cannot be remedied by current law;
- Based on available evidence, specifically attributing the portion of the wage gap allegedly caused by gender discrimination is impossible;

- No evidence exists that altering the definition of discrimination will beneficially address the wage gap or occupational clustering of women;
- Evidence that our economy is growing, adapting to accommodate women in the labor force and providing an efficient manner of wage setting does exist;
- Wage determination processes which do not consider market supply and demand have not been developed adequately;
- Job evaluations are inherently subjective and should not be used to compare different jobs without help from the market;
- Evidence exists that women have made tremendous progress -- particularly younger women -- in entering into nontraditional fields and obtaining higher paying jobs.

III. COMMENTS ON THE GENERAL ACCOUNTING OFFICE (GAO) REPORT ON OPTIONS FOR CONDUCTING A FEDERAL COMPARABLE WORTH STUDY

In its report submitted to Congress on March 1, 1985, GAO observed that pay equity is a very complex issue and that if a study is to be done, important policy decisions must be made. GAO also interpreted the *AFSCME v. State of Washington* case to mean that:

> an employer who commissions a pay-equity study for informational purposes may be legally bound by the results, even if the employer lacks confidence in the study's methodology." 2/

In its report, GAO referenced Congress to two other GAO reports which contain pertinent data and information relating to this Subcommittee's interest in equity for women in the federal government. In one report,3/ GAO provides an overview of the extensive and on-going methods by which all federal wages are classified and set. This report provides ample evidence that:

1. the federal government already is and has been conducting an extensive job evaluation;

2/ *Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems*, GAO/GGD -85-37, (March 1985) pg. 85.

3/ *Description of Selected Systems For Classifying Federal Civilian Positions and Personnel*, GAO/GGD - 84-90 (July 1984).

2. the value or worth of particular positions and individuals within positions are being continually assessed; and

3. there is no evidence that gender discrimination plays a part in that on-going process.

In the other report,[4] GAO presented Congress with data on the number and percent of male and female employees within the federal government. Contained in Appendix V of that report is a letter from the Office of Personnel Management (OPM) to GAO which deserves to be quoted:

> Attached is the additional trend information on the employment of women . . . Not only has there been increased representation of women across the board, but more important, there has been a significant upward shift in the distribution of women by grade groups. The increased representation of women in traditionally male-dominated occupations, particularly in professional occupations, has also been strong and sustained. Engineering, science, medicine, management, and administration have all experienced advances in the employment of women. The numerical increases are very positive, but what is most noteworthy is the rate of growth -- several hundred percent in some instances.[5] (emphasis added)

Documenting the progress of women within the federal labor force, these statistics should be welcome news to those concerned about occupational clustering of women. Appendix 1 of our testimony is the most recent data available on trends of women within the federal labor force.[6]

Returning to the GAO report, which is the primary focus of these hearings, the following observations must be made:

1. GAO made it clear from the outset that what is not clear is why the wage gap exists and whether discrimination plays a part (pg. 1).

2. GAO recognized that job evaluations are inherently subjective (pg. 30). (See separate GAO response to Rep. Dannemeyer.)

---

[4] Distribution of Male and Female Employees in Four Federal Classification Systems, GAO/GGD - 85-20 (November 1984).

[5] Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems, GAO/GGD -85-37, (March 1985) pg. 32.

[6] Our Appendix 1 is from Distribution of Male and Female Employees in Four Federal Classification Systems, GAO/GGD - 85-20 (November 1984), pp. 32-37.

3. GAO neglected to mention that Congress in 1962 specifically debated and rejected comparability as the standard for the Equal Pay Act.

4. GAO reminded Congress of the fact that on-going job evaluations have been/are being used within the federal government (page 6).

5. GAO recognized that market factors play a role in most job evaluation systems (pg. 27).

6. GAO does not attempt to answer questions such as what would be the best compensation system for the federal government? Is the current job evaluation and wage determinaion process used by the federal government bad, unfair or discriminatory? What are the fundamental elements of a sound compensation system? How would a comparable worth requirement work on a day-to-day basis?

7. GAO's discussion of the wage gap between males and females neglected more recent literature, such as the Rand study (released in October 1984) and the variety of expert papers presented in 1984 to the U.S. Civil Rights Commission.

8. GAO recognized that major disadvantages to any "job content" study include the following:

   - the inability of job evaluations to measure the worth of various jobs (pg. 30).

   - the inherent overlooking of explanations, other than discrimination, which may account for wage disparities between men and women (pg. 29-30).

   - the necessary focusing on the value of jobs as opposed to the value of individual workers (pg. 47).

9. GAO touched on a myriad of practical problems which have yet to be discussed (Appendix 2 includes many of them.)

10. GAO recommended an objective steering committee (pg. 52). (emphasis added)

11. GAO, recognizing that a new definition of discrimination lies within the comparable worth controversy, distanced itself from the idea of such a study being in any way related to sex-based wage discrimination (pg. 10).

12. GAO was not given the option of fully discussing why a study should not be conducted. However, it took it upon itself to mention the AFSCME case in the State of Washington and the fact that an employer who commissions a study may be legally bound by its findings, even if they lack confidence in the methodology.

IV. S. 519 IS MORE THAN "A STUDY" AND REPRESENTS A SIGNIFICANT CHANGE IN THE LAW

Comparable worth proponents, particularly those advocating that the federal government must conduct a "study," often tell us that they are not asking for a new law. The Chamber must respectfully and firmly disagree. As these bills are being discussed (and as S. 519 implies), they embrace a definition of discrimination that clashes with existing law and precedent.[7/]

Equal opportunity is the law. Equal pay for equal work is the law. And non-discrimination is the law. But comparable worth is not the law. Any bill which explicitly or implicitly seeks to define discrimination on the basis of the comparative value of different jobs represents a significant change in the law.

For example, would it be proof of "discrimination" when the rates of pay for positions held predominantly by female employees are lower than the rates of pay for comparable positions held predominantly by male employees? Last year, the United States Court of Appeals for the Ninth Circuit rejected this definition of discrimination. The Court ruled that it would not infer intentional discrimination merely from the existence of a wage disparity between jobs that are not the same. Spaulding v. University of Washington, 740 F.2d 686, 700 (9th Cir.), cert. denied, 105 S. Ct. 511 (1984). The Court pointed out that:

[7/] Similarly, S. 5 seeks to "reaffirm" an interpretation of the law which was specifically rejected by Congress in 1962 and which has since been rejected by the courts. As the legislative history of the Equal Pay Act demonstrates, Congress considered, debated, and rejected a comparability standard as a basis for finding sex discrimination. See discussion of legislative history in ANA v. State of Illinois, 37 FEP Cases 705, 706-707 (E.D. Ill. 1985).

> Intuitively, evidence of a pay disparity between jobs that are only comparable [rather than between jobs that are the same] says very little about discrimination. 740 F.2d at 704.

The Court concluded that to extend our civil rights law to include claims of unequal pay for comparable work would "plunge us into uncharted and treacherous areas." 740 F.2d at 706.

Thus, the Ninth Circuit refused to accept an interpretation of Title VII of the Civil Rights Act which presumed the existence of discrimination whenever employees of different sex receive different compensation for "work of differing skills that may, subjectively, be of equal value to the employer, but does not command an equal price in the labor market." 740 F.2d at 707, citing Christensen v. State of Iowa, 563 F.2d 353, 356 (8th Cir. 1977).[8] The Court reiterated that the federal policy embodied in Title VII is that individuals are entitled to equal opportunities in the job market, but not equal results. To the contrary, however, S. 519 appears to be drafted as a proposal that would seek to guarantee equal results by ignoring the existence of legitimate market factors such as supply and demand.

In discussing the labor market, we should note that the law does not permit an employer to pay a woman less because she is a woman or because she is willing to do the work for less pay than the employer would pay a man for the same work. But the law does allow an employer to pay bookkeepers less than truck drivers, for example, so long as the difference in pay is because the jobs and the market for them are different and not because the sex of the workers is different.

---

[8] The Spaulding decision also cites with approval the decision in Lemons v. City and County of Denver, 620 F.2d 228, 229, (10th Cir.) cert. denied, 449 U.S. 888 (1980), in which the court held that Title VII does not require employers "to ignore the market in setting wage rates for genuinely different work classifications." 740 F.2d at 706.

The reasoning of the Ninth Circuit in Spaulding is a sound and logical extension of the Supreme Court's decision in County of Washington v. Gunther, 452 U.S. 161 (1981). In that decision, the Supreme Court said that the plaintiffs would have a claim under Title VII of the Civil Rights Act *if* the plaintiffs could prove that the alleged pay disparity was the result of intentional sex discrimination, 452 U.S. at 180-181. Comparable worth legislation proposes to change sharply the law, however, by eliminating the need for proof of intentional discrimination and by declaring that discrimination can be demonstrated by merely showing the existence of a difference in pay.

The most recent analysis of existing law appears in the decision by the federal court in Chicago dismissing a suit brought by Illinois state employees. That decision follows the rationale of Gunther and Spaulding and thus squarely contradicts the approach proposed in the comparable worth legislation. In the Illinois case, the plaintiffs based their claim on a study commissioned by the State of Illinois to examine the relative value of jobs held predominantly by males and jobs held predominantly by females. The study examined 24 different jobs and assigned the highest point total (1017 points) to the predominantly-female job of "Nurse -- Level 4." The predominantly-male job of electrician was assigned 548 points and the predominantly-male job of "Accountant -- Level 5" was assigned 889 points. In their class action, the plaintiffs argued that the results of the study demonstrated that the State was guilty of sex discrimination because the position of electrician was paid more than the position of nurse.[9]

Thus, the plaintiffs in Illinois were seeking endorsement of a theory of discrimination which was essentially identical to the theory proposed in comparable worth legislation. The federal district court, however, rejected the plaintiffs' theory and concluded:

---

[9] It may be noted that the position of electrician also was paid more than the predominantly-male job of accountant, even though the accountant position was given more points in the job evaluation study.

> The court cannot infer intent [to discriminate] merely from the existence of wage differences between employees in historically female-dominated job classifications and employees in historically male-dominated job classifications. American Nurses Association v. State of Illinois, No. 84-C-4451 (E.D. Ill., April 4, 1985), slip opinion, page 12.

The court in Illinois also rejected, in very specific terms, the reasoning of Judge Tanner in the much publicized case of AFSCME v. State of Washington, 578 F. Supp. 846 (D. Wash. 1983), now pending on appeal before the Ninth Circuit.

> To reach the conclusion in the Washington State case, the court had to assume that the results of the State's job evaluation studies were valid measurements of the relative "worth" of the jobs in question -- more valid, in fact, than the values placed on those jobs by the market . . . . I, unlike Judge Tanner, am unwilling to treat the results of the State's job evaluation studies as the true and reliable measurement of the inherent worth of the surveyed jobs. ANA v. State of Illinois, slip opinion, page 12.

And, as in Spaulding and Christensen, the court in State of Illinois stressed that the federal policy embodied in Title VII "is that individuals should be entitled to equal opportunities, not results, in the job market." Id.

When the decisions in the State of Illinois and State of Washington are examined and compared, we can hardly doubt that the State of Illinois decision is a well-reasoned opinion built soundly on existing law and precedent and that the State of Washington decision is a literally unprecedented interpretation of Title VII.

The Chamber fully supports the "equal opportunity" guarantee reflected in our existing law, rather than the "equal results" approach suggested by proponents of comparable worth. However, even those who might wish to see the law changed in the manner of the advocates of comparable worth must be sensitive to the perverse potential impact of the State of Washington decision. As the GAO Report warns, Judge Tanner's decision suggests that:

> *an employer who commissions a pay-equity study for informational purposes may be legally bound by the results, even if the employer lacks confidence in the study's methodology.* [10/] (emphasis added)

Indeed, when the *State of Washington* argued to Judge Tanner that it did not have the funds necessary to implement immediately the results of the study, Judge Tanner brushed aside the State's concerns and ruled that "Title VII remedies are *now*." 578 F. Supp. at 868. The clear meaning of this ruling is that, under Judge Tanner's ruling, once the federal government does the so-called "study" proposed by S. 519, the federal government may find itself compelled to implement the results of that study, regardless of what those results might be.

V. RAMIFICATIONS OF COMPARABLE WORTH

Prior to endorsing the concept of comparable worth by calling for a "study" of federal employees, the Chamber urges Congress and this Subcommittee, in particular, to consider the comments being made by its proponents and consider the ramifications of such an action.

A. A NEW DEFINITION OF DISCRIMINATION

Winn Newmann, the attorney who represented AFSCME in the Washington state case, has testified that "Many public and private employers model their wage practices on the federal government. Investigation of wage discrimination in the federal sector would be invaluable in the drive to eradicate wage discrimination throughout the nation."[11/] Just as the State of Washington generated an expensive lawsuit by conducting a comparable worth study, so will Congress be generating a lawsuit. One only has to look at the comments being made by proponents of this federal study:

> Now, if that study comes out that way (demonstrating wage differentials) and this body then does not do something to correct it and we know it is there, then we are guilty of intentionally discriminating.[12/]

[10/] *Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems*, GAO-GGD 85-37, March 1, 1985, page 85.

[11/] Statement of Winn Newmann.

[12/] Representative Patricia Schroeder (D-Co)

And, let there be no doubt about it, a precedent will be set for the private sector as a result of congressional approval of this new definition of discrimination.

B. COST OF COMPARABLE WORTH IN THE FEDERAL GOVERNMENT

The important issue is whether the comparable worth theory provides a practical, effective way of identifying discrimination and narrowing the average earnings gap. If it does not, comparable worth should be rejected even if the costs involved would be minimal. In view of its limited efficacy, the excessive costs of implementation provide further reason to reject comparable worth.

Comparable worth proponents often will suggest that those who raise the cost arguments would condone discrimination because it is expensive to remedy. To quote the U.S. Civil Rights Commission on this very issue, their report said:

> This is a specious argument. The costs must be examined precisely because they would be imposed in the name of nondiscrimination and civil rights even as the comparable worth concept leaves discrimination against women in employment largely unaddressed. This would amount to money spent on a purportedly anti-discrimination remedy which, instead, serves the political-social-economic objectives of its advocates.[13]

So, what is the wage gap in the federal government and how much would it cost to eliminate it? The GAO report gives us some useful statistics. On page nine of the report, they indicate the average wage for men and women and the number of men and women employees. Based on those figures alone, the Chamber estimates the cost to "eliminate the wage gap"[14] in the federal government to be $6.6 billion, not including back pay liabilities and the subsidies which would be necessary on a yearly basis to maintain "pay equity."

---

[13] Comparable Worth: An Analysis and Recommendation, a report of the U.S. Commission on Civil Rights, adopted April 11, 1985, by a vote 5-2 (expected publication date: June 1985) p. 58.

[14] This appears to be the articulated goal of many proponents of legislation such as H.R. 27 and H.R. 375 in the House and S. 519 and S. 5 in the Senate. For example, in her statement before a House subcommittee on March 28, 1985, Rep. Patricia Schroeder stated: " . . . on average, men working for the federal government earn $12,000 per year more than women. We need to find out why this pay disparity exists, and then fix it."

C. ECONOMIC CONSEQUENCES OF COMPARABLE WORTH

Dr. George H. Hildebrand, an economist and professor at Cornell University, has spoken of the potential adverse economic and social consequences of comparable worth in the following manner:

> There are three ways by which a comparable worth policy will increase unemployment, and along with it, poverty and welfare dependency. First, as with the minimum wage, it will raise the price of low-productivity workers without improving their productivity. In consequence, employers will be induced to lay part of the group off to hold down the enforced rise in their costs. Unlike the minimum wage, comparable worth would affect many more workers because it is intended to reach much further into the labor market. Second, for the low-paid women working in the numerous small or even tiny firms, the imposed rise in labor costs will bring about either much bankruptcy or voluntary closure. Disemployment of these workers will follow. Third, in larger firms the imposed increase in labor costs will create an incentive to substitute capital and to revise plant or shop organization to replace low-paid women or alternatively, to raise hiring standards so that fewer workers of either sex who are more productive can replace them.
>
> In summary, economic theory tells us that if comparable worth is put into effect (1) unemployment rates for females will rise, (2) unemployment of females also will rise, (3) the major victims will be the poorest female workers, (4) welfare dependency will grow, (5) female youngsters will be large losers of job opportunities, and (6) there will be some withdrawal of discouraged women workers from the labor force, precisely because official policy, in the purported service of a peculiar concept of social justice, will have destroyed their jobs for them, despite their own efforts to be productive and self-supporting citizens. 15/

15/ *Comparable Worth: Issues and Alternatives*, E. Robert Livernash, editor, (1984), p. 106.

D. COMPARABLE WORTH: CONFERS UNREALISTIC STATUS TO JOB EVALUATIONS AND DETERS EMPLOYERS FROM DOING ANY JOB EVALUATION

Since we know that each job does not have a measurable, economic worth which can be determined logically and compared objectively to other different jobs, this "study" would be asked to do the impossible, yet declared to have the force of law. Should Congress pass such a study and then use that study to adjust wage scales for traditionally female jobs, the likely result will be to exacerbate the current dilemma facing employers as to whether they should conduct a job evaluation in the first place. Employers naturally would shy away from a process which inevitably would place them in court.

E. DISTORTS PAY EQUITY CONCEPT

Since the legislation as written prohibits decreasing salaries for any employees' wages which the study determines have been traditionally "over-valued," the concept of pay equity is being badly maligned. In the truest pay equity scheme, one would think that the wages which had been over-valued would decline and the wages which had been undervalued would be raised.

VI. FOUR KEY ISSUES DRIVING THE COMPARABLE WORTH DEBATE

A. AVERAGE WAGE GAP STATISTICS

Although we often hear the average woman makes only 64¢ for every dollar earned by the average man, this comparison is a manipulation of statistics which is misleading. Furthermore, recent studies uniformly conclude that the wage gap is narrowing based on female workers bringing, significantly more education, training and other market-rewarded skills to the work force.

(1) Statistical Analysis Can Be Misleading.

The statistic most often cited by comparable worth proponents is total earnings, but they generally fail to refine wage disparities with factors such as work experience, occupation, seniority, and education. Pay to women and men performing the same job, having the same education, work experience, seniority, and other attributes is virtually identical. If a woman were not receiving equal pay for equal work, she would have grounds for a legal complaint.

The Bureau of Labor Statistics reports that for the fourth quarter of 1984 the median weekly earnings of full-time wage and salary workers show that women earned 66.5 percent as much as men. BLS also reported that during the past five years the overall trend, despite quarter-to-quarter fluctuations, shows the earnings gap between male and female workers significantly narrowing.[16]

Comparable worth proponents claim that the fact that women are, to a certain extent, currently clustered in lower-paying jobs is inherently unfair and is "discrimination" which needs to be remedied by law. By their analysis, the market is to blame. However, little evidence suggests that the private-sector marketplace, comprised of more than five million employers, has conspired to hold the wages of women below that of men. Moreover, such a claim fails to acknowledge that gender-based occupational "clusters" are, to some degree, largely due to occupational and educational preferences. For example, the students of engineering schools are overwhelmingly male, yet that is not because of discrimination by engineering schools.

(2) Women Have Entered the Labor Force at Record Rates.

At the beginning of this century, fewer than one in five women were members of the labor force; by 1983, more than six in ten were. Female labor force participation rates increased 50 percent from 1950 to 1970 and continued to grow at an accelerated rate during the 1970's.[17] However, the women entering the work force between 1940 and 1970 tended to be less educated and less skilled than their male counterparts of that day or their female counterparts of today. As a result, average wage rates were skewed.

---

[16] U.S. Department of Labor, Bureau of Labor Statistics.

[17] Time of Change: 1983 Handbook on Women Workers, U.S. Department of Labor, Bulletin 298, 1983.

Since the new labor market entrants and re-entrants were less skilled than the women already working, they lowered the average wage of working women. However, because, on the whole, they are more educated, more competitively skilled, and tend to be more committed to their professional career, recent female entrants, competing on the merits with male job applicants, are raising significantly the average wage of women.

The U.S. Civil Rights Commission recently analyzed annual figures of women's wages versus men's wages. Its report indicates that women earn 64.5 percent of men's average wages when based on annual earnings of mostly full-time workers and 72 percent when based on hourly wage comparisons. If only full-time workers between the ages of 20 and 24 are considered on an hourly basis, the female earnings ratio is 89 percent.[18/]

Additionally, despite tremendous progress by women in recent years, women still obtain fewer advanced degrees than men and tend to acquire them in fields with lower earnings potential; women work an average of 35.7 hours a week compared with 44 hours a week for men; women are 11 times more likely to leave the work force before retirement than men; and women are more willing to trade-off higher pay for other perceived benefits, such as greater flexibility for entry and exit from the work force or sedentary indoor work.[19/]

Trends indicate that women will not be represented disproportionately in entry-level positions and their aggregate earning levels relative to men's earning levels will increase.

18/ Comparable Worth: An Analysis and Recommendation, a report of the U.S. Commission on Civil Rights, adopted April 11, 1985, by a vote 5-2 (expected publication date: June 1985).

19/ Equal Pay for Unequal Work, Phyllis Schafly, editor, Washington, D.C., 1984, based on Eagle Forum Eduation and Legal Defense Fund Conference held October 17, 1983.

(3) Wage Gap is Narrowing Without Comparable Worth

In a research project funded by the National Institute of Child Health and Human Development, the Rand Corporation released a report last October which offers evidence that refutes charges that no changes are occurring in men's and women's relative wage rates. The Rand study reached three conclusions:

1. The wages of working women did not increase relative to those of working men between 1920 and 1980 because the skill (as measured by education and experience) of working women did not increase relative to the skill of men over this period;
2. Women's wages relative to men's wages have increased substantially between 1980 and 1983, although this has largely gone unnoticed;
3. Evidence indicates that the economic status of women will improve significantly relative to that of men over the next 20 years.[20]

(4) Wage Disparity Factors

Proponents of comparable worth often contend that the wage gap between male and female workers is solely the result of discrimination. While discrimination -- of the type which can be effectively remedied by existing law -- is a factor, other factors include the following:

- Many women tend to choose traditionally female jobs and traditionally female educational specialties;
- Women have exclusive responsibility for child-bearing, which can interrupt work force participation and career development;
- Women tend to take primary responsibility for child-rearing and the family;
- Many women tend to place their careers second to their husband's career (in instances of geographic mobility and flexibility);

20/ Women's Wages and Work in the Twentieth Century, by J.P. Smith and M.P. Ward, published by Rand Corporation, October 1984.

- Women's participation in the work force tends to fall as their husband's income increases;
- Men are more likely to be union members than women;
- Women are more likely to want jobs which entail less physical effort and more comfortable work environments;
- The progressive tax system tends to depress a married woman's incentive to work, since they generally are taxed beginning with the husband's highest marginal tax rate;
- A plentiful supply of workers in a majority of traditionally female job categories exists;
- Women are more likely to work fewer hours per week than men; and
- Accumulation of tenure or seniority is more routinely interrupted by women than men.

B. OCCUPATIONAL CLUSTERING

A primary reason for the wage gap is that women are still found to be employed in a limited number of jobs -- jobs which tend to pay lower wages. The reasons are complex and varied. While the cause is neither exclusively nor primarily the hiring and personnel practices of employers, as some would have us believe, closing the wage gap is similarly complex and multi-faceted. It should not be simplistically assigned to wholesale government intervention in the labor market.

(1) Women are Moving Into Nontraditional Fields at Record Rates.

Although we have no clear-cut definition of what female-dominated jobs are -- whether they are jobs in which women account for 85 percent, 75 percent or 51 percent of all workers -- many women are choosing to enter nontraditional fields of employment and training. More women are being employed as executives, administrators, managers, lawyers, doctors, dentists, engineers and highly skilled workers. More young women are choosing nontraditional fields of education and training.

This is documented by the following trends:

FEMALE ENROLLMENT IN:

	1971	1981
Law School	9.4%	35.3%
Medical School	10.9%	37.9%
Dental School	1.9%	18.7%

	Bachelors'		Masters'		Doctors'	
	1971	1980	1971	1980	1971	1980
Engineering	0.8%	10.3%	1.1%	8.2%	0.6%	4.1%
Business & Management	9.3	36.7	3.9	25.0	2.6	14.8
Agriculture & Natural Resources	4.2	30.8	5.9	23.5	2.9	11.9
Communications	35.3	54.7	34.6	53.0	13.1	41.2
Architecture and Environmental Design	12.0	28.1	14.1	29.1	8.3	21.5
Physical Sciences	14.0	24.6	13.4	20.5	5.6	12.0
Computer and Information Sciences	13.6	32.7	10.3	23.0	2.3	9.9

	Bachelors'		Masters'		Doctors'	
	1971	1980	1971	1980	1971	1980
Education	74.4%	75%	52.2%	71.5%	21.2%	47.3%
Home Economics	97.3	95.0	93.9	90.2	61.0	68.4
Letters	61.0	59.8	57.5	61.1	23.5	43.6
Library Science	92.0	94.1	81.3	82.7	28.2	56.3

*Source: Statistics taken from various sources as reported in: The Potomac Institute, A Decade of New Opportunity: Affirmative Action in the 1970's, The Potomac Institute, Washington, D.C., October 1984.

C. GENDER DISCRIMINATION

As noted, comparable worth advocates argue that disparities in income between men and women and the heavy concentration of women in certain occupations are proof of sex discrimination.

(1) Existing Law is Broad and Effective.

Existing laws already provide comprehensive protection against sex-based wage discrimination, as discrimination has been defined up to now. For example, under the Equal Pay Act and Title VII of the Civil Rights Act of 1964, women, because of their sex, cannot be:

- denied a job because they are a woman;
- denied equal pay for equal work;
- intentionally paid less than men;
- discriminated against in initial job assignments;
- intentionally segregated into "women's" jobs;
- denied the right to apply for any jobs, particularly higher-paying jobs often performed by men;
- denied training, transfers, promotions or any other job opportunities;
- subjected to intentional job evaluation manipulations that downgrade their pay.

Any employer who violates these laws can be ordered to provide backpay and other remedies to the victim of the discrimination.

Women workers also benefit from the federal government's affirmative action requirements. Federal contractors are required to evaluate their work forces to determine whether women are "underutilized" in any job categories. If they are, the contractor must establish hiring goals and timetables and make good faith efforts to hire women for those jobs in numbers proportionate to their availability in the labor market. If a contractor fails to make good faith efforts to meet these obligations, the contractor can be penalized, including loss of existing contracts and/or being banned from bidding on additional contracts.[21]

In addition to these extensive federal protections, the vast majority of states and some local governments have similar laws and requirements prohibiting discrimination on the basis of sex.

(2) Congress, National Academy of Sciences, and U.S. Civil Rights Commission Have Rejected Comparable Worth.

The wage rate legislation originally introduced in the United States Congress in 1962 contained the very comparable worth approach that is being considered by this Subcommittee. That approach was flatly rejected in favor of the equal work standard. The reasons that the equal work rather than the comparable worth standard was adopted are still highly relevant.

Representative Katherine St. George (R-NY) sponsored an amendment to the Equal Pay Act which rejected a comparable worth approach in favor of the equal work approach. She supported her amendment by stating:

> There is a great difference between the word comparable and the word equal. . . . the word "comparable" opens up great vistas. It gives tremendous latitude to whoever is to be the arbitrator in these disputes.[22]

Similarly, Repesentative Phil Landrum (D-GA) noted that the St. George "equal work" amendment would prevent:

> the trooping around all over the country of employees of the Labor Department harassing business with their various interpretations of the term "comparable" when "equal" is capable of the same definition throughout the United States.[23]

---

[21] Presidential Executive Order 11246 applies to Federal contractors with contracts in excess of $10,000.

[22] 108 Cong. Rec. 14767.

[23] 108 Cong. Rec. 14768.

The House accepted the St. George "equal work" amendment to the Equal Pay Act.[24]

Thus, when Congress drafted the 1962 Equal Pay Act, it carefully considered and *rejected the "comparable" worth approach because of the lack of guidance to employers inherent in such an approach and because it would have given unlimited power to the administrator of such a standard to substitute his or her judgment for that of the employers*.

In addition to Congress, another impartial body has distanced itself from the comparable worth approach for identifying and remedying "discrimination." In the late 1970's, the Equal Employment Opportunity Commission contracted with the National Academy of Sciences (NAS) to perform a study of wage discrimination allegations and the comparable worth approach. That study was performed by a panel composed of representatives of academia, labor, industry and women's interests.

Contrary to expectations, the NAS committee did not recommend the adoption of a comparable worth approach. In its final report, entitled *Women, Work, and Wages*, the NAS committee concluded that the comparable worth approach was unworkable, stating:

> One procedure that has been suggested is to compare the actual rates of pay of jobs with the relative worth of jobs; wage discrimination would be suspected whenever jobs are not paid in accordance with their relative worth. This relative (or comparable) worth approach in turn requires a generally acceptable standard of job worth and a feasible procedure for measuring the relative worth of jobs. *In our judgment no universal standard of job worth exists, both because any definition of the 'relative worth' of jobs is in part a matter of values and because, even for a particular definition, problems of measurement are likely*. (emphasis added)[25]

---

[24] 108 Cong. Rec. 14771.

[25] *Women, Work and Wages*, National Academy of Sciences, D. Treiman and H. Hartmann (1981), p. 94.

The NAS committee thus concluded that no universal job evaluation approach is feasible.

In addition, the committee cautioned that those who sought to elevate the pay levels of jobs performed largely by women and minorities might be damaging the economic viability of firms, as well as the employment opportunities for women and minorities. The report stated:

> . . . we have not been able to make any assessment of what the social and economic consequences may be of implementing wage policies based on the principle of equal pay for jobs of equal worth. This is an extremely complex question, with no clear answers, which goes well beyond the charge to the committee. We do, however, want to call attention to the need to give careful thought to the possible impact of implementation of a policy of equal pay for jobs of equal worth on the economic viability of firms as well as on employment opportunities for women and minorities.[26]

Finally, last month the U.S. Civil Rights Commission, in a draft report on comparable worth, advised Congress not to adopt legislation that would establish the comparable worth doctrine in the setting of wages in the federal or private sector.[27] We commend the Commission's report to you. It contains significant data and sound, reasoned arguments.

(3) The Market Does Not Discriminate Against Women.

Only to the extent that the market reflects societal attitudes and biases that may influence an employees choice in selecting and performing a job can the market be said to be discriminating.

The market obviously is influenced by numerous factors that exist outside the employment context. But, discrimination within the employment context -- for example, where an employer intentionally segregates women into certain jobs -- is against the law. Discriminatory employer practices can be dealt with under present law, and effective remedies exist for persons injured by such practices.

---

[26] Women, Work and Wages, National Academy of Sciences, p.94.

[27] Comparable Worth: An Analysis and Recommendation, a report of the U.S. Commission on Civil Rights, adopted April 11, 1985, by a 5-2 vote (expected publication date: June 1985).

Advocates of comparable worth argue that the law should be broadened to make employers responsible for the marketplace effects that result in lower wages for certain female-dominated jobs, regardless of whether the employer created those conditions. But to achieve that goal, arbitrary mechanisms to evaluate the relative worth of different jobs must become a basic part of our existing economic system. Such an extensive imposition of subjective job-worth judgments would radically alter our present competitive market system, a system which is based on equal opportunity, not on equal results. Comparable worth would seriously distort markets, including their resource allocation function.

On this subject, the U.S. Civil Rights Commission has said:

> To the extent that the pay gap results from nondiscriminatory factors -- such as socialization within the family, women's aspirations, women's labor force participation cycles resulting from child-rearing, or discrimination outside of the workplace such as what may or may not occur in education -- an employer has violated no one's right to be paid without regard to his or her gender. Similarly, to the extent that market factors of supply and demand, seniority, and merit factors result in different pay for different jobs, an employer is not guilty of discrimination for relying on them.[28]

(4) Comparable Worth Is Preferential Treatment For Groups, Not Equal Opportunity For Individuals.

Because the results for any one group are not statistically equal, we should not assume that our present laws have failed. Comparable worth has the potential, just as quotas, to generate tension between the desire to provide equality for groups in the aggregate and the need to protect the rights of individuals. When a person's group status entitles that person to "x,y, or z," the inevitable result is to (a) reduce the focus on individual merit and ability while (b) increasing the role of government, the courts or others who supervise the distribution of societal resources. Equality of results based on group status will be at the expense of equality of opportunity for individuals, and comparable worth is no shortcut to equality for women.

---

[28] Comparable Worth: An Analysis and Recommendation, a report of the U.S. Commission on Civil Rights, adopted April 11, 1985, by a 5-2 vote (expected publication date: June 1985) p. 56-57.

D. JOB EVALUATIONS

Job evaluations are considered, by comparable worth proponents, to be capable of objectively determining job worth and comparing completely different jobs.

Being an imprecise art at best, a value-laden rationalization process at worst, job evaluations are incapable of scientifically and objectively discovering the fairest wage. Wage determination is far too complex to reduce such comparisons to any numerical equation which would determine, with the force of law, discrimination.

(1) "Worth" Is Not What Determines Wages.

Worth is an elusive concept subject to changes based on competition, consumer preferences, individual merit or experience, new technology or other market forces. Two jobs may have comparable characteristics, but they do not necessarily have comparable value. I may work as hard as a rock star; I may train as hard as Mary Lou Retton; I may smile as much or know as much as Barbara Walters, but if the rest of society puts a higher value on their products than on mine, they will have — entirely reasonably — a higher income. Our rewards typically are determined by the community's valuation of what we produce.

On the other hand, when those in positions of authority dislike the results of market preferences, they see a need to "correct market imperfections" through legislative mandate. Comparable worth is such a case. Because there is allegedly someone or something that can more fairly set wages and distribute income, the freedom to confer value through market choices is to be taken away. However, we have not seen evidence of what that process is and evidence of whether that process will be more fair, more efficient or compatible with an economic and political system which values individual freedom.

In sum, what the market does is process information on the scarcity of talents, the tastes of individuals, the demands of consumers and the availability and cost of other resources and technology. Market wages primarily reflect a balance between what employers are willing to pay for workers' services and how much is needed to induce workers to supply the labor for particular jobs.

Employer demand for workers depends primarily on two factors -- labor productivity in the job and the value of the products produced with the labor. Worker supply also depends on a number of factors, some of which are relatively objective and easy to measure, while some are highly subjective and difficult to measure.

The end result is a system of wages which probably seems unfair by any single person's judgment. A society that rewards rock stars like Cindy Lauper, Boy George, or Michael Jackson more than it does priests, nurses, or social workers appears unfair, unjust and morally wrong. On the other hand, unless we are willing to alter our whole economic and political system, a legal requirement which effectively forces an employer to ignore prevailing market wages or holds individual companies responsible for results they did not create simply will not work.

(2) The Role of Job Evaluations.

Employers have used job evaluations -- of various degrees of sophistication -- for decades. Job evaluations are typically valuable management tools designed and intended for use in consensual contexts with sufficient flexibility to accommodate an organization's needs and changing circumstances. Job evaluations have never been intended to operate apart from or outside of market considerations. Employers cannot ignore labor costs in a competitive economy. Employers must pay whatever workers with essential skills demand. Without a doubt, employers are swayed by considerations of internal fairness, but those are meaningless if looked at in a vacuum. If the economic viability of a business is at stake, if the labor costs are such as to sway an employer to close a business or not to open a business, the costs are borne in lost jobs and lost opportunities.

The job evaluation process requires either an individual or a committee to translate descriptive information for myriad positions into comparative terms that will allow someone to determine the value of the jobs. The translation from descriptive information to comparative data is the essence of job evaluation and this is an inherently subjective process. Determining the weights or values to be assigned to various jobs is traditionally a management prerogative. The number of discretionary judgments can be substantial — particularly as the number of factors to be assessed rises. At no time does any of the methods attempt to determine a job's "value" or "worth" in an absolute sense to the organization. The ultimate determination as to a job's value is the employer's decision as to its worth, and the employee's willingness to accept that decision.

VII. RECOMMENDATIONS

Until the legal conflicts surrounding comparable worth are judicially resolved, the Congress must come to realize that conducting a study and failing to implement it, despite its cost, could result in lengthy and expensive lawsuits and huge liabilities. In addition, the Chamber is extremely concerned with the readiness with which the proponents of this study couch their objectives in terms of discrimination. Claiming that pay disparities between traditionally male and female workers are the result of "discrimination" is inviting a lawsuit. Again, it is well established that wage disparities can be caused by a variety of factors, most of which are nondiscriminatory.

S. 519 should be rejected for the following reasons:

- it would be granting the comparable worth theory official congressional approval;
- it would require full implementation of the concept within the federal system;
- it would implicitly define discrimination in a radical new way;

- it would trigger expensive litigation for the government and taxpayers;
- it would have far-ranging implications for the private sector;
- it could cost taxpayers some $6.6 billion (minimally);
- the bill wrongly defines job evaluations as "objective" although objectivity would be impossible to establish; and
- the only permissible wage adjustments for achieving "pay equity" are wage increases.

S. 5 should be rejected for the following reasons:

- it attempts to reaffirm that comparable worth is embodied in existing law;
- it would require the Equal Employment Opportunity Commission to "educate" all public and private-sector employers on eliminating "discriminatory pay practices" (according to the comparable worth concept) so as to "implement the principle of equal pay for jobs of equal value;" and
- in essence, private-sector employers would be required to do comparable worth "studies" of their workforces.

The issue is not whether we should eliminate unfair and discriminatory compensation practices; rather, the issues are these:

1) Is existing law incapable of remedying specific instances of discrimination?

2) Does comparable worth provide a practical, effective way of eliminating pay inequities? (Note: Inequalities are not per se inequities.)

VIII. SUMMARY

The solution to occupational clustering of women does not lie in forcing employers to pay higher wages for what has traditionally been called "women's work."

The goal of equal employment opportunity should be to create complete job mobility for women, giving women access to all jobs, including the highest paying, traditionally male jobs, and allowing the concept of "men's jobs" and "women's jobs" to continue to wither away. Comparable worth would do precisely the opposite. It would perpetuate sex-segregated jobs. By artificially raising the pay for traditionally women's jobs to a level above the market rate, comparable worth would create a perpetual and artificial inducement to women now in those jobs to remain in them and would induce new generations of women to continue to limit their career aspirations to traditional women's jobs, even as the number of those jobs shrinks because they have been arbitrarily overvalued by legislative/administrative fiat.

What is needed instead is a vigorous effort to eliminate all artificial barriers that have limited women's employment options. Those barriers include social pressure, women's own attitudes, discrimination, lack of information about opportunities, lack of encouragement and inadequate education and training. All of society -- women and men entering the work force, women and men now in the work force, educators, employers -- must realize that there is no such thing as a "man's job" or "women's job," as a matter of law.

The Chamber urges Congress and this Subcommittee to reject the comparable worth concept -- particularly when cloaked as a mere study to determine "equity."

Thank you.

APPENDIX I

United States
Office of
Personnel Management
Washington, D.C. 20415

OCT 10 1984

Rosslyn Kleeman
Associate Director
General Accounting Office
Washington, D.C. 20548

Dear Mrs. Kleeman,

Attached is the additional trend information on the employment of women I promised in my recent August 30, 1984 letter. It illustrates how such data can give point-in-time statistics some perspective and thereby provide better insight into the dynamics of employment.

The trend information shows marked gains in the areas that really count. Not only has there been increased representation of women across the board, but more important, there has been a significant upward shift in the distribution of women by grade groups.

The increased representation of women in traditionally male-dominated occupations, particularly in professional occupations, has also been strong and sustained. Engineering, science, medicine, management, and administration have all experienced advances in the employment of women. The numerical increases are very positive, but what is most noteworthy is the rate of growth--several hundred percent in some instances.

The attached tables provide specific information on these improvements. Please let me know if we can be of any further assistance.

Sincerely,

Patrick S. Korten
Assistant Executive Director

Table 2 - DISTRIBUTION OF WOMEN BY GRADE GROUP

	1974		1980		1983	
	Women	Percent	Women	Percent	Women	Percent
GS & equivalent Grades						
1-4	243,840	41.6	212,637	32.0	192,714	28.0
5-8	247,531	42.2	291,793	44.0	306,036	44.4
9-12	86,095	14.7	141,601	21.3	167,593	24.3
13-15	9,147	1.6	17,818	2.7	22,724	3.3
Total 1-15	586,613	100.0	663,849	100.0	689,067	100.0

Data Source: Occupational surveys of full-time (permanent and temporary tenure) Federal civilian employment excluding U.S. Postal Service as of October 31, 1974, 1980 and 1983.

APPENDIX 1

Table 4 - PROGRESS OF WOMEN IN MALE DOMINATED OCCUPATIONS

Code	Title	1974	1980	1983	1974-83 Growth	%	1980-83 Growth	%
1811	Criminal Investigating	163	813	1,351	+1,188	728.8	538	66.2
462	Forestry Technician	633	1,758	1,762	1,129	178.4	4	0.2
2152	Air Traffic Control	639	1,706	1,732	1,093	171.0	26	1.5
1910	Quality Assurance	291	680	1,273	982	337.5	593	87.2
810	Civil Engineering	72	329	734	662	919.4	405	123.1
602	Medical Officer	828	1,379	1,643	815	98.4	264	19.1
1370	Cartography	209	686	857	648	310.0	171	24.9
80	Security Administration	576	816	1,076	500	86.8	260	31.9
855	Electronics Engineering	111	257	609	498	448.6	352	137.0
460	Forestry	7	83	462	455	6500.0	379	456.6
401	General Biological Science	457	803	896	439	96.1	93	11.6
404	Biological Technician	1,617	1,976	2,043	426	26.3	67	3.4
26	Park Technician	434	899	948	414	45.4	- 51	- 5.7*
1515	Operations Research	109	332	473	364	333.9	141	42.5
475	Agricultural Management	10	158	372	362	362.0	214	135.4
1601	General Facilities and Equipment Management	26	99	379	353	1357.7	280	282.8
1816	Immigration Inspection	174	436	522	348	200.0	84	19.2
1670	Equipment Specialist	73	242	405	332	454.8	163	67.4
18	Safety and Occupational Health Management	83	282	408	325	391.6	126	44.7
1530	Statistician	455	820	749	294	64.6	- 71	- 8.7*
2130	Traffic Management	249	379	508	259	104.0	129	34.0
25	Park Management	85	207	309	224	263.5	102	49.3
486	Wildlife Biology	9	105	185	176	1955.6	80	76.2

Data Source: Occupational surveys of full-time (permanent and temporary tenure) Federal civilian employment excluding U.S. Postal Service as of October 31, 1974, 1980 and 1983.

*Employment decreases occurred for both men and women; nevertheless, overall percent of women increased as shown on Table 3.

APPENDIX 2

PRACTICAL PROBLEMS AND DECISIONS FOR A FEDERAL "STUDY" ON PAY EQUITY

1. What are the goals of this study? Does the study infer "intent"? Does the study prove discrimination? Does the study mandate a remedy?

2. How is "pay equity" to be determined, achieved, and maintained?

3. What are the legal ramifications of such a study?

4. The federal government uses over 60 different systems to set pay. Different agencies may often pay the same occupation differently. How would comparable worth take this into account?

5. Would each agency be designated a separate employer for determining "value" or should the federal government be designated as one single employer?

6. Does the fact that wage gaps between male and female workers vary by agency represent varying degree of discrimination or equity?

7. How is discrimination to be defined?

8. Which federal systems and employees should be included? How should we define "traditionally male" or "traditionally female" jobs? What device could be used to monitor changes in these categorizations? Would the study be confined to just those jobs defined as traditionally male or female or is it right to include all jobs?

9. What kind of study should be done?

10. What statistical techniques should be used?

11. How much are we willing to spend on such a study? Is there any limit?

12. How would comparable worth requirements work on a day-to-day basis?

13. Who would determine the factors, factor weights, and terms to describe various jobs so as to attempt to quantify "value"? To what extent is this already being done within the federal government?

14. Are there any groups of employees who should be exempted from this pay scheme?

15. Should contingencies be built into the pay scheme to allow the government to respond legitimately and fairly to shortages, to seniority requirements, and other employment needs? Who will give permission to the government to respond to such shortages? Who would determine if the shortage is real? Who would decide if the response is fair and legitimate if the shortage was deemed real?

16. How would factors such as seniority, job performance, locality pay differences, special rates for hard-to-fill positions be affected?

17. What message do we want to send to private sector employers?

18. How much weight should market supply and demand factors be given?

19. What if different job evaluators reach differing conclusions on the worth or value of any particular job? Is it to be assumed that job evaluations are value-free and objective?

20. How are comparable worth determinations related to collective bargaining principles?

ADVANCING VOLUNTARY LEADERSHIP IN A CHANGING WORLD

Chamber of Commerce of the United States

BUSINESS-GOVERNMENT POLICY DEPARTMENT
EMPLOYER RELATIONS SECTION

202-463-5514

1615 H STREET, N.W.
WASHINGTON, D.C. 20062

June 18, 1985

The Honorable Ted Stevens, Chairman
Subcommittee on Post Office and Civil Service
Senate Governmental Affairs Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

During my testimony before your Subcommittee on May 22, 1985, a question was presented to me concerning specific problems I saw in S. 519. In response to that question, I have given S. 519 further study and would like to submit the following statement.

S. 519 is much more than a "study." It is, in the words of its sponsor, a comparable worth study. Thus, the momentum which would be generated from congressional endorsement of this controversial doctrine must be considered in your deliberations over this legislation. Beyond this political-psychological factor, the legal uncertainties of conducting such a study at this time pose significant problems. The Senate would be best to reject comparable worth as a workable theory by which to set wages, and seek other methods by which to assist individual women in the workplace.

I have enclosed a brief analysis of S. 519, which may be of use to you and your committee.

In addition, Section 4(a) of S. 519 would require a study to determine whether the wage-setting practices in the federal government are in compliance with the law prohibiting sex discrimination. In prescribing how the study is to be conducted, however, S. 519 sets forth a plan which would require a consultant to make comparisons of the relative worth of different jobs. Thus, while S. 519 is drafted to carefully avoid the use of the term "comparable worth," it seeks essentially the same type of study as those bills which have been directly identified as "comparable worth" bills. And, because existing laws do not require that different jobs be paid according to their "comparable worth," the results of the S. 519 study are going to be of no use in determining whether federal wage-setting complies with existing law.

The flaws in S. 519 become evident when you examine precisely what it asks a consultant to do, and what it ignores. S. 519 asks a consultant to determine whether there are jobs in the federal system which are "equivalent in totality" but which are paid different rates. According to Section 4(a)(1) of the bill, the consultant would do this by making findings as follows: The consultant must evaluate jobs in the federal system on the basis of skills, effort, responsibility, qualifications, and working conditions. In doing this evaluation, the consultant must determine, according to whatever subjective value judgments the consultant chooses to make, which jobs appear to carry the same number of total points. The consultant would then determine whether some of these jobs are paid less than certain other jobs with the same point total. Finally, the consultant must examine whether any of these lower-paid jobs are filled predominantly by women. On the basis of these results, could an assessment be made as to whether the government is "discriminating," as discrimination has been defined up to now, in violation of the law? The plain answer is, "No."

The courts have made it clear that the mere fact that one job — predominantly filled by women — is paid less than a different job — filled predominantly by men — is not discrimination. See Spaulding v. University of Washington, 740 F.2d 686 (9th Cir. 1984). What may support a conclusion of discrimination, the Supreme Court has said, is where there is not only evidence of a pay disparity but also evidence that the reason for the disparity is intentional sex discrimination. See County of Washington v. Gunther, 452 U.S. 161 (1981).

The problem with the S. 519 study is not simply a legalistic one. There are practical reasons why a conclusion of discrimination cannot be drawn from the findings the consultant is asked to make. For example, a primary reason why some jobs are paid more than other jobs is because the supply of workers is different for different skills. Even though a consultant may place the same intrinsic value on two different skills, employers may find that there is a large supply of individuals in the workforce with the one skill and a scarcity of individuals with the second skill. The S. 519 methodology seeks to set up artificial comparisons of different jobs while ignoring legitimate market factors, such as supply and demand, which have an impact on wages.

Moreover, by attempting to compare dissimilar jobs simply on the basis of the "totality" of points, the S. 519 methodology seeks to mask fundamental differences in the components of various jobs. Thus, the S. 519 study would ignore the fact that market forces can be different for different job components. So long as two jobs each receive 1500 points from the consultant, S. 519 would treat those jobs as being similar — and deserving of similar pay — even though the jobs differ significantly in each of the components being measured, such as skills, effort, responsibility, qualifications, and working conditions. One job might be ranked high because it is demanding in terms of "effort" and "working conditions." Another job might receive the same point total primarily because of the "qualifications" and "responsibility" it demands. Two jobs with such different components might well command different pay rates in the labor market because of different supply and demand factors. Yet, the S. 519 study would decide whether the two jobs were paid "appropriately" strictly on the basis of their equivalence in total points.

These are but a few of the problems passage of S. 519 will inevitably raise, Mr. Chairman.

It was a distinct honor and privilege to appear before your Subcommittee on this important issue. On behalf of the U.S. Chamber of Commerce, let me extend our most sincere appreciation for that opportunity. If we can be of any further assistance do not hesitate to contact me at 463-5517.

Sincerely,

Virginia Lamp

Virginia B. Lamp
Labor Relations Attorney

cc: Senator Dan Evans
Members of Senate Governmental Affairs Committee

ADVANCING VOLUNTARY LEADERSHIP IN A CHANGING WORLD

Chamber of Commerce of the United States

1615 H STREET, N.W.
WASHINGTON, D.C. 20062

COMPARABLE WORTH

Bill Number: S. 519, The Federal Employee Anti-Sex Discrimination in Compensation Act of 1985
Sponsors: Daniel Evans (R-WA), Alan Cranston (D-CA)
Date Introduced: February 27, 1985
Referred to: Senate Governmental Affairs Committee
Hearings expected: April
Co-sponsors: John Chafee (R-RI), John Kerry (D-MA), Daniel Inouye (D-HA), Donald Riegle (D-MI), Howard Metzenbaum (D-OH)

Synposis: S.519 would create a new federal agency to require that the federal government conduct a study of pay comparing traditionally male and tradionally female jobs within the federal government, and then taking appropriate action on the basis of that study. This Commission would be composed of 9 unelected officials who would have the authority to choose the consultant to conduct the job evaluation study. The Commission would then make recommendations relating to implementing policy to the Office of Personnel Management and the Congress.

Significant Portions:

-§4 (a) (1): This is a critical part of the legislation, in that it exposes the three fundamental and faulty presumptions underlying the comparable worth theory: (a) that wage gaps can be equivalent to gender discrimination; (b) that each job has a measureable economic worth which can be determined free of bias; and (c) that different jobs can be objectively compared.

Although the legislation asks for merely a "study," studies have consistently been used as triggers for litigation in the states and localities which have begun them. This particular study, when viewed by legislators or the courts in the future, will be used to grant pay increases or subject the employer (the federal government in this case) to discrimination liability. Job evaluations, in comparable worth cases, are no longer tools for management. Instead, they prove "discrimination" and are given the force of law.

-§5 (b) (2): The new Commission will submit a report along with the study. This report cannot contain, according to a specific proviso of S. 519, any recommendation for a reduction in any one's pay. Despite the obvious political advantages to such a provision, if the goal is to establish the "worth" or value of the tasks performed, one would think that readjustment of pay scales would be a logical, fair and less costly means to accomplish such a goal.

-2-

-§6 (a) (1): The Commission would be composed of 6 members selected by congressional leaders and the President and 3 members selected from labor organizations who represent large numbers of women. These members do not necessarily need to have expertise in the area. To the extent that this Commission's work would entail supervision of significant policy decisions, the transfer of decision-making responsibility is an attempt to avoid the political and difficult policy decisions inherent with implementing comparable worth on a larger scale. Such an agency is also duplicitous since the Equal Employment Opportunity Commission, and the Office of Personnel Management, the Departments of Labor and Justice already have jurisdiction over the items of concern to this proposed, new Commission.

To establish worth, someone needs to assign weights to various tasks which allegedly can be compared. If the Commission is to do this, the void of management representatives is obvious, omitted, and problematic.

Comments: The precedent for the private sector in the government's sanctioning this new use of job evaluations and this new definition of discrimination has yet to be readily appreciated.

Causes of gender-based occupational tendencies are not necessarily discrimination-related, yet this legislation avoids many significant problems of implementing comparable worth on a broader scale. Such studies in the past have served as a catalyst for a plethora of plaintiff discrimination claims against the government. In the state of Washington, a similar study resulted in a pending 11% increase in the state budget; a similar impact on the federal government would be particularly inappropriate, particularly at this time of heightened concern about the federal deficit.

A primary advocate of comparable worth legislation, Rep. Patricia Schroeder (D-CO); has said, "Now, if that study comes out that way (demonstrating wage differentials) and this body then does not do something to correct it and we know that it is there, then we are guilty of intentionally discriminating."

Winn Newman, the attorney who represented AFSCME in the landmark Washington case, testified, "Many public and private employers model their wage practices on the federal government. Investigation of wage discrimination in the federal sector would be invaluable in the drive to eradicate wage discrimination throughout the nation."

Virginia B. Lamp
(202) 463-5317

Senator STEVENS. We will continue tomorrow morning. The subcommittee is recessed until that time.

[Whereupon, at 12:08 p.m., the subcommittee was recessed, to reconvene at 10 a.m. on Thursday, May 23, 1985.]

"OPTIONS FOR CONDUCTING A PAY EQUITY STUDY OF FEDERAL PAY AND CLASSIFICATION SYSTEMS"—REPORT OF THE GENERAL ACCOUNTING OFFICE

THURSDAY, MAY 23, 1985

U.S. Senate,
Subcommittee on Civil Service,
Post Office, and General Services,
Committee on Governmental Affairs,
Washington, DC.

The subcommittee met at 10 a.m., in room SD–138, Dirksen Senate Office Building, Hon. Ted Stevens, chairman of the subcommittee, presiding.

Present: Senators Stevens and Gore.

Also present: Senator Evans.

Staff present: Wayne A. Schley, staff director; Jeffrey D. Landry, assistant counsel; Pat Phillips, chief clerk; Thurgood Marshall, Jr., minority staff director and counsel; and Merry Halamandaris, professional staff member.

Senator **Stevens**. Good morning. We are going to continue this morning the hearings on the GAO report entitled "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems."

We are pleased to have with us this morning, I think it is your first appearance before us, in your position as Acting Director anyway, Loretta Cornelius, Acting Director of the Office of Personnel Management.

Won't you come up, please. We are all running a little late, I am afraid. I would appreciate it if you would tell us for the record the names of gentlemen who are with you, please.

TESTIMONY OF LORETTA CORNELIUS, ACTING DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, ACCOMPANIED BY RICHARD POST, ASSOCIATE DIRECTOR FOR STAFFING, AND JOSEPH HOWE, ASSISTANT DIRECTOR, OFFICE OF STANDARDS DEVELOPMENT

Ms. **Cornelius**. Yes. I am accompanied this morning by Mr. Richard Post, who is the Associate Director for Staffing, and Mr. Joseph Howe, who is the Assistant Director for Standards.

Senator **Stevens**. Thank you very much. Nice to see you here, gentlemen.

Ms. **CORNELIUS.** I would like my statement to be entered in the record, but in essence of time this morning I would just like to make a few comments from the statement.

Senator **STEVENS.** Yes. We will print the statement of all witnesses this morning in the record in full, and you may proceed as you wish.

Senator **STEVENS.** I am pleased to see Senator Evans has joined us again today. This is Mrs. Cornelius, the Acting Director of the Office of Personnel Management, Senator.

Ms. **CORNELIUS.** Mr. Chairman, and members of the subcommittee, thank you for inviting us to testify on the General Accounting Office report on "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems." As the central personnel agency for the executive branch, the Office of Personnel Management is interested in GAO's comments on various options for conducting a study of sex-based wage discrimination in the Federal Government.

In general terms, the report is quite correct in stating that any study of Federal pay practices would have to be preceded by a clear delineation of the specific goals to be achieved. This is an important policy decision which would have a profound effect on the overall study approach.

The basic classification principles in chapter 51 and subchapter IV of shapter 53 of title V, U.S. Code, are that there be equal pay for substantially equal work and that Federal pay rates be comparable with private enterprise pay rates for the same levels of work. We believe that the basic goal of any study should be set in the context of these legislative principles.

The GAO report notes "If the GS and FWS systems are the focus of the study, a standardized grade structure must be agreed on because grades are not equivalent in the two systems."

The GAO is right. Such a study would require a single standard for covering blue-collar and white-collar jobs. We do not have such a standard. Comparing widely dissimilar jobs across different pay systems requires resolution of such complex and fundamental issues as what weight to give to physical effort and working conditions versus analytic processes and office work elements in any factor evaluation, as well as the issue of locality pay versus national rates.

The GAO report discusses the possible use of committees or outside consultants to conduct the study. Specifically, the report states that it may be appropriate to appoint "A steering committee (which) could report directly to Congress and could be granted the authority to make policy decisions. * * *"

We have serious concerns with this approach. Public policy should be the focal point of free and unfettered debate by all interests. We would offer strong obections to providing such a group the authority to actually formulate and implement Government policy. Public policy should be made by the public's elected and legal representatives, who can be held accountable for their decisions.

Given the complexity of this issue, the GAO report appropriately raises numerous questions for which answers are yet to be found.

OPM's general position on this report is that all of the questions raised about the definition of what legally constitutes proof of sex-based wage discrimination, about the objectivity, accuracy, and effectiveness of various study methods, about the policy direction for setting Federal pay, and about the mechanisms employed to make policy decisions in this area should be thoroughly aired and answered before Congress should consider embarking on a formal study.

In the Federal Government, since 1923, the process of position classification has been used to determine the grade level of jobs, and the grade levels of jobs have determined the pay of employees.

The pay of employees is based on the work they do and on market factors reflected in pay rates and not on characteristics of the individual, such as sex, age, race, or other individual features of the person.

The impression is held that patterns of job and grade concentration of women are static, that little or no progress can be observed. In fact, the data available show that women in the Federal service have experienced significant occupational changes over the past 10 years. There has been a redistribution of the women in Government at the same time that the number and percent of women in the Federal work force have been expanding.

We believe these data indicate that progress is being made and that women are advancing into occupations and jobs of increasing responsibility. OPM remains dedicated to the setting of fair standards which are consistent with relevant laws and fairly enforced. As the Government's agency for personnel management, we believe that our pay systems currently establish pay without respect to sex, age, or race.

Mr. Chairman, this concludes my remarks. I will be happy to answer any of your questions.

Senator **Stevens**. Thank you very much.

I don't know about my colleagues, but I don't find much to disagree with. Your statement on page 6 that "many questions raised about the definition of what legally constitutes sex-based wage discrimination, about the objectivity, accuracy, and effectiveness of various study methods, about the policy direction for setting Federal pay, and about the mechanisms employed to make policy decisions in this area should be thoroughly aired and answered before Congress should even consider embarking on a formal study." I have to tell you, I think that is what we are doing now.

Ms. **Cornelius**. Yes, sir.

Senator **Stevens**. So we would like to air a few of those with you. The problem is that there seems to be an agreement that the inequity that does exist in Federal pay between men and women does contain an element of sex discrimination based upon past procedures and attitudes in our national community.

Does OPM disagree with that? Does OPM disagree that in this wage structure there is in fact a discrimination or discriminatory pattern which is the result of past national attitudes and past practices?

Ms. **Cornelius**. No.

Senator **Stevens**. You do not agree with that?

Ms. **Cornelius**. No.

Senator **Stevens**. I will yield to my friend from Tennessee for just 30 seconds.

Senator **Gore**. Mr. Chairman, I want to apologize to these witnesses for having to leave and go over to the MX debate. I want to put a statement in the record. I congratulate you on having these hearings and assure these witnesses that in spite of the fact I am called to this defense bill, I am extremely interested in this issue and want to work with the chairman and with those studying it in the executive branch to get a good resolution of it. Thanks.

Senator **Stevens**. I thought you would stay here and I would get in the MX debate. [Laughter.]

Senator **Gore**. We will both be in it before it is over with.

[Senator Gore's statement follows:]

OPENING STATEMENT OF SENATOR GORE

Mr. Chairman, I am pleased that you have called these hearings to discuss the complex issue of comparable worth. The fact that some studies indicate that women in the federal government earn only 62.8% as much as their male counterparts speaks to a very severe and unfair problem. Equally startling is the fact that this wage gap has persisted over the past 40 years with very little change. I am encouraged by the influx of women into traditionally male positions, and vice versa, and yet I recognize that this change in job patterns has not yet ameliorated the disparity in earnings.

The difficulty inherent in assessing the worth of jobs has led me to wonder what action, if any, can and should be undertaken to address the problem. Because of my uncertainty about the best course of action for the government tc pursue, I am particularly glad that House and Senate members of the 98th Congress had the insight to request the conduct of the GAO study which is the subject of these hearings.

The GAO invoked some of the leading experts in the country to assist in its study, and I commend the office for preparing an informative report. I look forward to the testimony to today's witnesses and thank them for taking the time to help the government determine the best course of action.

Senator **Stevens**. I think we start off with a basic difference in opinion with regard to the existing situation. I think that is unfortunate.

Let me use your own language again in asking you a question. What would be necessary to establish, for OPM, proof that there is sex-based wage discrimination in the Federal pay schedules?

Ms. **Cornelius**. The earnings gaps that are usually cited are based on the overall average rates of both men and women, regardless of the occupation. Now, these comparisons are not very meaningful sometimes because they are so general.

The real issue is whether men and women receive comparable pay for the same or similar work. Some of the examples could be that the same rates are paid in female-dominated positions, such as the accounting technicians in grades say 3, 4, and 5, as those paid in the male-dominated engineering technicians positions at the same grades.

Senator **Stevens**. Let me tell you, I think I have probably been in and out of this Government more than any other Senator, having served 8 years in the Eisenhower administration before I came to the Senate. I also practiced law and was at one time a U.S. attorney.

I remember a woman that was literally running the U.S. attorney's office when I got there. She had trained at least two or three U.S. attorneys. Her job classification left her with an earnings ceiling that was below the beginning salary of a new U.S. attorney.

Now, to me that job classification system was inequitable, without any question. Whether the classification was a result of any sex-based discrimination is the question.

We are about ready to start a study on pay equity. But the real question is whether we can reach an agreement on how to identify that portion of the wage gap that we know exists that results from sex-based discrimination.

Let me ask this question. Would you be in agreement if the study discovered there was in fact sex-based wage discrimination, it should be eliminated?

Ms. **Cornelius**. Yes.

Senator **Stevens**. There would be no question about that?

Ms. **Cornelius**. There would be no question about that.

Senator **Stevens**. We should understand before we start this study—I think Senator Evans would agree, too—what the ground rules are and what the definitions are.

How is your agency going to help us define what legally constitutes proof of sex-based wage discrimination? I think that is your task, not ours. Do your people disagree with that?

Ms. **Cornelius**. Well, actually, women have made some progress in the last 10 years. The overall percentage in the GS and equivalent jobs has increased. There has been a relatively small increase which really masks some of the dramatic gains we have had. Women in clerical positions in 1974 were 63 percent and in 1984 they were 45 percent.

Senator **Stevens**. I think those are marvelous statistics. But the question remains: Is there a pay inequity that is a result of the classifications of the past which presumed that women should hold clerical positions? You don't think there is.

Ms. **Cornelius**. No; I do not.

Senator **Stevens**. There is a great disparity in the wage scales, correct?

Ms. **Cornelius**. Not in the same classifications of the same jobs.

Senator **Stevens**. That is where we split. Let me get at it this way. What about the question of what constitutes objectivity, accuracy, and effectiveness of a study method? Are you prepared to discuss the study methods suggested by the GAO?

Ms. **Cornelius**. Yes, sir.

Senator **Stevens**. I want you to know there is nothing personal, Miss Cornelius, about my approach to your statement. I think it is a good statement, as I said, and we here have great admiration for you and your past actions down at OPM.

Ms. **Cornelius**. Thank you.

Senator **Stevens**. You have shown us you are a woman of strength. We want you to be as strong in this subject as you have in some others, because I think the Government needs a new direction on this study.

Ms. **Cornelius**. I would like to ask Mr. Post to describe for you the classification system.

Senator **Stevens**. Thank you very much. Mr. Post.

Mr. **Post**. I think it is fairly well understood from what we read in the GAO report and from the many experts who have written in this field that no job evaluation system is totally objective. There is always some judgment involved.

However, we believe that the existing Federal job evaluation systems contain numerous safeguards which assure that subjectivity is minimized and kept under control.

For example, the principal systems which we administer, the General Schedule systems for white-collar occupations and the Federal wage system for blue-collar occupations, focus by law on the character of the jobs, on the work that is performed, and the factors that go into that work which create different levels of difficulty and responsibility. The General Schedule system flows from statutory grade level definitions for each GS grade.

In arriving at the valuing or the pricing of white-collar occupations, we develop, as required by statute, standards which are required for agencies to use in arriving at the classifications of those positions. Those standards are arrived at through a very rigid and disciplined process of study of that occupation as it exists, as it is being performed, and the qualifications and knowledge, skills and abilities that are required to perform those jobs.

Senator STEVENS. Let me interrupt you, Mr. Post. How long has it been since that classification system has been analyzed by the Federal Government?

Mr. POST. It has been analyzed really on a continuing basis.

Senator STEVENS. I know that. I mean every year you look at it. But, the system itself.

Mr. POST. There have been a number of studies, including by outside bodies. The most recent major improvement, if you will, in our process for classifying white-collar occupations is the factor evaluation system, the point factor system, which was developed in the early seventies.

Senator STEVENS. Has there been a study to determine whether there were any sex-based wage discrimination factors involved in the classification system?

Mr. POST. Our system is linked to the——

Senator STEVENS. No, no, Mr. Post. Let's play fair with one another. The question I asked is, has there been such a study conducted, ever, to your knowledge?

Mr. POST. I am not sure I can answer that because I am not sure I know the definition of sex-based wage discrimination because I haven't read the literature.

Senator STEVENS. You know the definition. You know whether there has been a study conducted to try and find if there was any. We might disagree on the definition of what constitutes that, and I agree with Miss Cornelius in her statement on that.

My knowledge is from the time I served in the Department of Justice, Department of the Interior and being here now for 17 years; in my time, which now constitutes 35 years in Government there has not been one.

Mr. POST. The studies are comprehensive in terms of the effectiveness and the faithfulness to the statutes that govern the system we are administering and the efficiency and effectiveness of what we are doing.

So those are the foci of the studies. You could look at it in terms of improving, constantly trying to make sure that it is current, it is doing what it should do.

Senator STEVENS. I want to be perfectly fair with you for the record. So, when you go back I want you to look at your records and dig wherever you want to dig and ask yourself the question I asked you. Has there ever been a study conducted of the type that Senator Evans has requested us to make; and that is, whether or not the existing system in any way contains any elements of sex-based wage discrimination?

I think that is not an unfair question to ask. Answer that for the record. I would like to have that answer. Your agency should have that from your predecessor agencies.

Mr. POST. I can say that none of the studies we are aware of have ever found or identified anything called sex discrimination in the job evaluation.

Senator STEVENS. I am not sure they ever looked for it, though, either. That is one of the problems.

I am reminded of something I finally discovered in my own office. You know, and she is probably going to have her ears burn, but I suddenly decided we ought to look and find out what is the most valuable thing in this office I have run for 17 years. In my judgment, it is the files, because I need those files when I need them and I need them now.

We started looking at the compensation for the person that has been running those files for 17 years and she, too, has trained a whole series of people, but her pay wasn't really reflecting here responsibilities and worth to my office.

I don't think, with due respect to my friend from Washington, it was sex-based, but it was simply a classification error. It was sheer inequity in terms of my office and what was the most important function there over the long term.

I think it was based in some of those old classifications that did in fact come out of the idea that there are certain jobs a woman ought to do.

I will tell the Senator from Washington, I sort of scare myself when I suddenly realize I have been around this Government for 35 years. Your witness, my friend.

Senator EVANS. Thank you, Mr. Chairman.

Miss Cornelius, you talk in your statement on page two of the general objectives of basic classification principles and what they are for Federal wage-setting practices. It seems to me you fail to mention an important provision in title V of the code which says equal pay should be provided for work of equal value. Now this isn't equal pay for equal work, but it also is a proviso that equal pay should be provided for work of equal value. Is that an important classification principle?

Ms. CORNELIUS. The statutes, we feel, are consistent. The merit principle that was adopted by the Civil Service Reform Act speaks to equal pay for work of equal value. But we feel that it was never the intent of Congress to depart from the principle of equal pay for equal work.

Senator EVANS. Why do you suppose that phrase is in there? It seems to be fairly clear English to me.

Ms. CORNELIUS. Employees, to be compensated for equitability, is a consideration to be given to both the national and local rates paid employees in the Federal Government.

Senator EVANS. Let me get back to the phrase. It seems to me that this phrase in the current code is almost in perfect relationship to the kind of study that we are talking about conducting. So I fail to see the serious objections from the Office of Personnel Management to conducting such a study.

Ms. CORNELIUS. Both the House and Senate reports on the Civil Service Reform Act made it very clear. The House report expressly stated that equal pay for equal work shall be continued as a basic pay policy.

Senator EVANS. Certainly it says that essentially as one of the elements, but you start with the law. The law is pretty clear. I would suspect—although, Mr. Chairman, I am not a lawyer and you have had many years in the profession—when it says equal pay should be provided for work of equal value, you have to conduct some kind of study, some kind of measure, to determine whether there is equal value. Isn't that correct?

Ms. CORNELIUS. Mr. Post would like to comment on that area.

Mr. POST. The phrase which you are referring to, I believe, is merit principle three, which is a general statement of principle for the Federal personnel system.

With regard to the classification systems that we administer, the language is much more precise. It is specifically stated that we will follow the principle of equal pay for substantially equal work. That specific statute is the guidance that we most turn to rather than a general statute.

However, to underscore the point, we do not believe that they are inconsistent but, rather, perfectly consistent because of what we have read in the legislative history, and that is that both the House and the Senate, the Senate specifically, said that there should be no change in current law in this regard.

So I don't believe there was an attempt or an effort to depart from the principle of equal pay for equal work.

Senator EVANS. Ms. Cornelius, in your testimony on page 6 you state that the market is the key determinant in what Federal employees are paid. With all of the law and with all of the classification schemes and principles, which it seems to me are the really fundamental basis on which all of the other elements are laid, is that an accurate statement? You are saying, in other words, Federal pay essentially is attempting to reflect what people on the outside are getting paid?

Ms. CORNELIUS. That should be a factor included.

Senator EVANS. But you are not saying that it is the key determinant?

Ms. CORNELIUS. Mr. Post will comment on that.

Mr. POST. The law does require us in setting GS pay to follow the principle of comparability with the private sector. That principle is done through surveys conducted by the Bureau of Labor Statistics, so it is market sensitive in that sense.

Those are national rates. The blue-collar pay system, the Federal wage system, is a locality wage rate system based on several hundred local wage areas that are determined through local wage surveys; again, very market sensitive or market based. So the market is key on the pay side, there is no question about it.

Senator EVANS. If that is the case, has the Office of Personnel Management been up in front of Congress testifying on behalf of wage increases for the Federal civil service, in opposition to the determination of the administration that those wages ought to be capped or frozen? In other words, how inconsistent are we when on the one hand we say the market is the key determinant, we determine what the market rates are and we say these are what the Federal civil service ought to be paid, and then the administration comes right up and says we should not do that, we ought to freeze their pay? Is that consistent?

Ms. CORNELIUS. I think we try to have a balance between the internal and the external market rates.

Senator EVANS. Getting particularly to the study proposed by S. 519, you express serious reservations about the concept of a steering committee. You say that "public policy should be the focal point of free and unfettered debate by all interests," which I certainly would agree with. Then you say that you have "strong objections to a steering committee having authority to formulate and implement Government policy."

There is nothing in the bill that gives them that authority to formulate and implement Government policy. That authority comes clearly from Congress.

I find your next statement then, that "public policy should be made by the public's elected and legal representatives who can be held accountable for their decisions," of course that is true. That is not changed in any respect by S. 519.

I am curious as to where you find in S. 519 that the steering committee will have absolute authority to formulate and implement policy without congressional oversight. Can you identify any place in the bill that that is the case?

Ms. CORNELIUS. We have not yet commented on S. 519.

Senator EVANS. Do you find anything in the GAO report that suggests the steering committee has that authority to formulate and implement Government policy?

Ms. CORNELIUS. The GAO report suggests establishing a steering committee to be granted the authority to formulate policy decision. We believe the establishment of the policies should be retained as a Government function and that it should not be contracted.

Senator EVANS. You say that in the GAO report the steering committee is given that absolute authority to formulate and implement Government policy without congressional oversight?

Ms. CORNELIUS. As I read the comment on the steering committee, it was to be granted the authority on the policy decisions.

Senator EVANS. Again in your testimony on page 6 you express the key policy issues involved should be decided by the executive and legislative branches of Government. I wholeheartedly agree with you. In light of OPM's past behavior, however, I find it difficult to accept.

I do not lay these problems at your doorstep. You have had a limited amount of time. I think you have tried to be at least responsive to the requests that Senator Cranston and I have made.

But let me ask a question. You have made an internal pay equity review during the past year, is that not correct?

Ms. CORNELIUS. There has been a review underway. It is in progress.

Senator EVANS. Dr. Devine mentioned the existence of this document over a year ago. So I presume that you have had some substantial experience with that internal pay equity review. It has been in existence for at least a year.

Ms. CORNELIUS. There is part of the review, yes. I have currently reviewed it.

Senator EVANS. Each time we have asked for that information, it is reported to us that it is unavailable. We have written on two different occasions and both times we received a totally inadequate response. You would not make this information available even to the GAO to help them in making their report.

Now you come before us and say that the executive and legislative branches of Government are the ones who must make key policy decisions. If you won't share anything, even though I understand you will claim it is an incomplete work product, but if one agency can't share with another agency and if the executive branch can't share with Congress in trying to build toward a better answer and more accurate answer, how then can you claim that the executive and legislative branches ought to be the ones that conduct the policy?

Ms. CORNELIUS. Senator, at this point what I have reviewed in the report is not something that I would want to sign off on at this time.

Senator EVANS. Is it possible that the review brought forth some information that didn't fit preconceived notions of the department?

Ms. CORNELIUS. It is possible, but it is still under review.

Senator EVANS. I can just serve notice on you sometime, some way, in some fashion, we will seek to have that shared with us because I think it is important information. It would be much better if you would be willing to share it voluntarily.

I think it is important in the legislation, which I have introduced, to establish a commission with broad-based representation. In that legislation I provide that the Director of OPM shall have the authority to select labor union representatives, which I think is an important function and important responsibility. The reason for doing that was to try to bring OPM into the process as much as possible because I think you have an important role.

However, I have a memorandum written just about a year ago by James Byrns who was then Deputy Associate Director for staffing. Are you familiar at all with that memorandum?

Ms. CORNELIUS. No, sir.

Senator EVANS. I suggest that it would be a good idea to get familiar with it. It was written on May 14. It seems to me it is a blatant, outrageous, political document telling his Director, addressed to Dr. Devine, in essence saying that there are some great political opportunities and have you thought of what might happen if the pay equity bill passes. We have a chance to distort this thing, which is essentially what he says, and the political possibilities should not be underestimated. He goes on to say, finally, "This situation presents opportunities that we should not ignore. Of course, it is a dangerous course, but it might change the nature of the whole debate on comparable worth."

Senator **Evans**. Thank you, Mr. Chairman.

Senator **Stevens**. Thank you.

Again, I want to say, Mrs. Cornelius, we understand the position of Director is vacant and you are the Acting Director. There are positions that have been taken before you became Acting Director that we know you are trying to—I don't know what to say—comply with rather than uphold.

But, I do believe that we need to have OPM understand that this bill is probably going to get to the President. I think it would be very unfortunate if we ended up in the position where the recommendation coming from OPM would be that it be vetoed. That is where you are going now.

I think even if you are correct, even if your agency—I don't want to put this in a personal point of view—in its position, why should it fear the study? Because if the agency is correct, the study will support your conclusion if it is a fair study.

Again, I would direct you back to the paragraph that I cited. We would like to have your help in assisting us in formulating that definition of what legally constitutes proof of sex-based wage discrimination. We would like to have your comments on the various study methods that have been proposed. We had them from GAO yesterday. We would like to have your suggestions about the policy directions for setting Federal pay and the mechanisms to be employed in making policy decisions in this area.

The hearings are going to go on a little while longer. If you have anything further to submit, we would like to have it.

Ms. **Cornelius**. We will be happy to cooperate. Thank you.

Senator **Stevens**. Thank you. Thank you, Mr. Post and Mr. Howe. I appreciate your testimony.

[Mrs. Cornelius' prepared statement follows:]

STATEMENT OF
HONORABLE LORETTA CORNELIUS
ACTING DIRECTOR
U.S. OFFICE OF PERSONNEL MANAGEMENT

GAO REPORT ON OPTIONS FOR CONDUCTING A PAY EQUITY STUDY

BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE, AND GENERAL SERVICES
COMMITTEE ON GOVERNMENTAL AFFAIRS
U.S. SENATE

MAY 23, 1985

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, THANK YOU FOR INVITING US TO TESTIFY ON THE GENERAL ACCOUNTING OFFICE REPORT ON "OPTIONS FOR CONDUCTING A PAY EQUITY STUDY OF FEDERAL PAY AND CLASSIFICATION SYSTEMS." AS THE CENTRAL PERSONNEL AGENCY FOR THE EXECUTIVE BRANCH, THE OFFICE OF PERSONNEL MANAGEMENT IS INTERESTED IN GAO'S COMMENTS ON VARIOUS OPTIONS FOR CONDUCTING A STUDY OF SEX-BASED WAGE DISCRIMINATION IN THE FEDERAL GOVERNMENT. THE CHAIRMAN IS TO BE COMMENDED FOR HIS LEADERSHIP IN INVESTIGATING THIS SUBJECT WHICH IS IMPORTANT TO THE EFFECTIVE OPERATION OF OUR GOVERNMENT AND THE EQUITABLE TREATMENT OF ALL OF OUR EMPLOYEES.

In a letter dated November 15, 1984, selected Chairpersons and Members of Congress asked the GAO to comment on various methods and organizations for conducting an objective, accurate, and effective study to determine whether job classifications held predominantly by female workers are underpaid in contrast to those held predominantly by male workers where the job qualifications, working conditions, and requirements are judged to be comparable. The GAO was also asked to estimate the time and cost of such a study.

As a framework for commenting on the GAO report, I would like to structure my remarks in accordance with some of the general steps for conducting a study as outlined in the GAO report. This will allow me to highlight points of general agreement as well as some reservations we have about specific aspects of the overall design.

Developing and articulating a specific goal.

In general terms, the report is quite correct in stating that any study of Federal pay practices would have to be preceded by a clear delineation of the specific goals to be achieved. This is an important policy decision which would have a profound effect on the overall study approach.

The basic classification principles in Chapter 51 and Subchapter IV of Chapter 53 of title 5, U.S. Code, are that there be equal pay for substantially equal work and that Federal pay rates be comparable with private enterprise pay rates for the same levels of work. We believe that the basic goal of any study should be set in the context of these legislative principles.

Deciding which pay and job systems should be included.

The GAO report makes no recommendation on which pay and classification systems should be included in the study. It does suggest, however, that focusing on the GS and FWS systems would cover 83 percent of the full-time employees in executive branch agencies. The report further notes that:

> "...if the GS and FWS systems are the focus of the study, a standardized grade structure must be agreed on because grades are not equivalent in the two systems."

The GAO is right. Such a study would require a single standard for covering blue-collar and white-collar jobs. We do not have such a standard. Moreover, comparing widely dissimilar jobs across different pay systems requires resolution of such complex and fundamental issues as the following:

--what weight to give to physical effort and working conditions vs. analytic processes and office work elements in any factor evaluation;

--the issue of locality pay versus national rates.

Selecting a job evaluation method.

The GAO has recommended both a job content evaluation and an economic analysis of the possible sources of the male-female pay gap in Federal employment. An economic analysis could prove helpful in analyzing at least some of the reasons for a disparity between male- and female-dominated occupations. A job content evaluation alone cannot adequately meet the standards of objectivity, ACCURACY, AND EFFECTIVENESS AS SET FORTH IN THE CONGRESSIONAL REQUEST TO THE GAO. INDEED, GAO HAS NOTED SHORTCOMINGS IN BOTH APPROACHES, SUCH AS THE INHERENT SUBJECTIVITY IN DESIGNING AND APPLYING ANY VALUE SYSTEM, THE DIFFICULTIES INVOLVED IN GATHERING AND USING PERTINENT DATA, THE ADEQUACY OF COMMON VARIABLES FOR EVALUATING OCCUPATIONAL AND EMPLOYEE CHARACTERISTICS, AND THE PROBLEMS OF CREATING A UNIVERSAL EVALUATION PLAN WHICH IS RELEVANT AND RELIABLE ACROSS DIFFERENT PAY SYSTEMS.

AN ADDITIONAL CONCERN IS THAT USING ONLY THESE TWO APPROACHES WITHOUT A BROADER FOCUS MAY BE INSUFFICIENT. THE SURVEY MODEL IS DEFICIENT IN THAT IT FAILS TO INCLUDE A DETERMINATION AS TO WHETHER THOSE IN MALE- OR FEMALE-DOMINATED OCCUPATIONS ARE REWARDED SIMILARLY IN FEDERAL EMPLOYMENT RELATIVE TO THEIR COUNTERPARTS IN THE PRIVATE SECTOR.

DECIDING HOW THE EVALUATION METHOD SHOULD BE IMPLEMENTED.

THE GAO REPORT DISCUSSES THE POSSIBLE USE OF COMMITTEES OR OUTSIDE CONSULTANTS TO CONDUCT THE STUDY. SPECIFICALLY, THE REPORT STATES THAT IT MAY BE APPROPRIATE TO APPOINT "A STEERING COMMITTEE (WHICH) COULD REPORT DIRECTLY TO CONGRESS AND COULD BE GRANTED THE AUTHORITY TO MAKE POLICY DECISIONS, TO HIRE AND DIRECT THE EFFORTS OF NEEDED CONSULTANTS, TO COORDINATE WITH APPROPRIATE FEDERAL AGENCIES AND, PERHAPS MOST IMPORTANTLY, TO INTERPRET STUDY RESULTS AND TO MAKE RECOMMENDATIONS." THE PROS AND CONS OF VARIOUS PUBLIC OR PRIVATE SECTOR GROUPS DOING THE STUDY ARE NOT DISCUSSED. HOWEVER, THE REPORT POINTS OUT THAT THOSE SELECTED TO CARRY OUT SUCH A STUDY MUST BE AS OBJECTIVE AS POSSIBLE, REPRESENT ALL SIDES OF THE ISSUE, AND POSSESS OR HAVE AVAILABLE A HIGH DEGREE OF TECHNICAL COMPETENCE IN THE CONDUCT OF COMPLEX JOB CONTENT AND/OR ECONOMIC ANALYSES.

WE HAVE SERIOUS CONCERNS WITH THIS APPROACH. PUBLIC POLICY SHOULD BE THE FOCAL POINT OF FREE AND UNFETTERED DEBATE BY ALL INTERESTS. WE WOULD OFFER STRONG OBJECTIONS TO PROVIDING SUCH A GROUP THE AUTHORITY TO ACTUALLY FORMULATE AND IMPLEMENT GOVERNMENT POLICY. PUBLIC POLICY SHOULD BE MADE BY THE PUBLIC'S ELECTED AND LEGAL REPRESENTATIVES, WHO CAN BE HELD ACCOUNTABLE FOR THEIR DECISIONS.

THE GAO REPORT DESCRIBES THE STEERING COMMITTEE CONCEPT AS ONE HAVING "PARTICULAR APPEAL FROM THE STANDPOINT OF OBJECTIVITY" IN THAT IT WOULD REPRESENT ALL INTERESTED PARTIES AND VIEWS. HOWEVER, THE GAO ENVISIONS THE GROUP BEING "ENTRUSTED WITH DECISION-MAKING AUTHORITY, SUBJECT TO CONGRESSIONAL OVERSIGHT, TO FACILITATE RESOLUTION OF A NUMBER OF POLICY ISSUES. THOSE ISSUES MAY INCLUDE:

--DECIDING ON A PRECISE GOAL OR GOALS FOR THE STUDY;

--DETERMINING WHAT PAY SYSTEMS WILL BE INCLUDED IN THE STUDY;

--DECIDING HOW JOBS AND/OR JOB INCUMBENTS WILL BE SELECTED FOR STUDY . . . . ;

--DECIDING WHAT GENERAL TYPE OF JOB EVALUATION WILL BE USED . . . . ; AND

--DETERMINING WHAT ANALYTIC TECHNIQUE WILL BE USED TO INTERPRET THE STUDY RESULTS."

IN OUR VIEW, THESE ARE KEY ISSUES WHICH SHOULD BE DECIDED BY THE EXECUTIVE AND LEGISLATIVE BRANCHES OF GOVERNMENT. THESE DECISIONS ARE SO CRUCIAL THAT THEY NEED TO BE MADE BEFORE DECIDING THAT A STUDY SHOULD BE UNDERTAKEN.

GIVEN THE COMPLEXITY OF THIS ISSUE, THE GAO REPORT APPROPRIATELY RAISES NUMEROUS QUESTIONS FOR WHICH ANSWERS ARE YET TO BE FOUND. INDEED, ON PAGE 52, THE GAO STATES THAT "A DECISION TO CONDUCT A PAY EQUITY STUDY AT THE FEDERAL LEVEL INVOLVES CONCERNS OF NATIONAL IMPORTANCE ON WHICH NO CLEAR CONSENSUS HAS YET FORMED." IT IS WORTH NOTING THAT THE GAO REPORT DOES NOT PROPOSE OR COMMENT ON ANY LEGISLATION ON THIS SUBJECT.

OPM'S GENERAL POSITION ON THIS REPORT IS THAT ALL OF THE MANY QUESTIONS RAISED ABOUT THE DEFINITION OF WHAT LEGALLY CONSTITUTES PROOF OF SEX-BASED WAGE DISCRIMINATION, ABOUT THE OBJECTIVITY, ACCURACY, AND EFFECTIVENESS OF VARIOUS STUDY METHODS, ABOUT THE POLICY DIRECTION FOR SETTING FEDERAL PAY, AND ABOUT THE MECHANISMS EMPLOYED TO MAKE POLICY DECISIONS IN THIS AREA SHOULD BE THOROUGHLY AIRED AND ANSWERED BEFORE CONGRESS SHOULD EVEN CONSIDER EMBARKING ON A FORMAL STUDY.

IT MAY BE HELPFUL TO THE SUBCOMMITTEE TO HAVE A BRIEF BACKGROUND ON OUR CURRENT PAY AND CLASSIFICATION SYSTEMS. IN THE FEDERAL GOVERNMENT, SINCE 1923, THE PROCESS OF POSITION CLASSIFICATION HAS BEEN USED TO DETERMINE THE GRADE LEVEL OF JOBS, AND THE GRADE LEVELS OF JOBS HAVE DETERMINED THE PAY OF EMPLOYEES. UNDER THE CLASSIFICATION SYSTEM, THE PAY OF EMPLOYEES IS BASED ON THE WORK THEY DO AND ON MARKET FACTORS REFLECTED IN PAY RATES, AND NOT ON CHARACTERISTICS OF THE INDIVIDUAL, SUCH AS SEX, AGE, RACE, OR OTHER INDIVIDUAL FEATURES OF THE PERSON.

GAO, IN ITS REPORT OF JULY 13, 1984, DESCRIBING SOME OF THE SYSTEMS FOR CLASSIFYING FEDERAL POSITIONS, STATED: "THE OBJECTIVE OF POSITION CLASSIFICATION IS TO ESTABLISH A RATIONAL, SYSTEMATIC STRUCTURE OF JOBS BASED UPON THEIR WORTH TO THE ORGANIZATION." FEDERAL STATUTES STATE THE FOLLOWING OBJECTIVES OF THE GENERAL SCHEDULE CLASSIFICATION SCHEME (FOR WHITE-COLLAR PROFESSIONAL, ADMINISTRATIVE, TECHNICAL, AND CLERICAL OCCUPATIONS):

> "... TO PROVIDE A PLAN FOR CLASSIFICATION OF POSITIONS WHEREBY--
>
> (1) IN DETERMINING THE RATE OF BASIC PAY WHICH AN EMPLOYEE WILL RECEIVE--
>
> (A) THE PRINCIPLE OF EQUAL PAY FOR SUBSTANTIALLY EQUAL WORK WILL BE FOLLOWED; AND
>
> (B) VARIATIONS IN RATES OF BASIC PAY PAID TO DIFFERENT EMPLOYEES WILL BE IN PROPORTION TO SUBSTANTIAL DIFFERENCES IN THE DIFFICULTY, RESPONSIBILITY, AND QUALIFICATION REQUIREMENTS OF THE WORK PERFORMED AND TO THE CONTRIBUTIONS OF EMPLOYEES TO EFFICIENCY AND ECONOMY IN THE SERVICE; AND
>
> (2) INDIVIDUAL POSITIONS WILL, ... BE SO GROUPED AND IDENTIFIED BY CLASSES AND GRADES, ... AND THE VARIOUS CLASSES WILL BE SO DESCRIBED IN PUBLISHED STANDARDS, ... THAT THE RESULTING POSITION-CLASSIFICATION SYSTEM CAN BE USED IN ALL PHASES OF PERSONNEL ADMINISTRATION."
> (5 U.S.C. 5101)

The statutory purpose of the General Schedule classification system--to provide the structure and framework for all phases of personnel administration--is therefore broader and more comprehensive in scope than the objective included in the GAO report. The General Schedule classification system has to support a pay system which sets nationwide pay rates for Federal jobs to be comparable with private enterprise pay rates for the same levels of work (5 U.S.C. 5301).

The Federal Wage System for blue-collar trades and labor work, on the other hand, includes a job grading plan that seeks these objectives:

> "It is the policy of Congress that rates of pay of prevailing rate employees be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and be based on principles that--
>
> (1) there will be equal pay for substantially equal work for all prevailing rate employees who are working under similar conditions of employment in all agencies within the same local wage area;
>
> (2) there will be relative differences in pay within a local wage area when there are substantial or recognizable differences in duties, responsibilities, and qualification requirements among positions;
>
> (3) the level of rates of pay will be maintained in line with prevailing levels for comparable work within a local wage area; and
>
> (4) the level of rates of pay will be maintained so as to attract and retain qualified prevailing rate employees." (5 U.S.C. 5341)

THE IMPRESSION IS HELD THAT PATTERNS OF JOB AND GRADE CONCENTRATION OF WOMEN ARE STATIC; THAT LITTLE OR NO PROGRESS CAN BE OBSERVED. IN FACT, THE DATA AVAILABLE SHOW THAT WOMEN IN THE FEDERAL SERVICE HAVE EXPERIENCED SIGNIFICANT OCCUPATIONAL CHANGES OVER THE PAST TEN YEARS; THERE HAS BEEN A REDISTRIBUTION OF THE WOMEN IN GOVERNMENT AT THE SAME TIME THAT THE NUMBER AND PERCENT OF WOMEN IN THE FEDERAL WORK FORCE HAVE BEEN EXPANDING. THIS IS BEST ILLUSTRATED BY DATA FROM THE CENTRAL PERSONNEL DATA FILE ON PERCENTAGES OF WOMEN FOUND IN THE FOUR MAJOR CATEGORIES OF FEDERAL WHITE-COLLAR OCCUPATIONS IN 1984 COMPARED WITH 1974:

	1974	1984
PROFESSIONAL OCCUPATIONS	8.3%	12.1%
ADMINISTRATIVE OCCUPATIONS	10.1%	20.5%
TECHNICAL OCCUPATIONS	13.9%	21.6%
CLERICAL OCCUPATIONS	62.6%	45.1%

THE PERCENTAGE OF WOMEN IN THE FEDERAL WORK FORCE WHO HELD PROFESSIONAL AND ADMINISTRATIVE POSITIONS, THE LINES OF WORK THAT LEAD TO THE HIGHEST GRADES AND PAY LEVELS, INCREASED FROM ABOUT 18 PERCENT TO 33 PERCENT DURING THIS PERIOD, WHILE THE PERCENTAGE OF WOMEN WHO HELD CLERICAL POSITIONS DECREASED FROM 63 PERCENT TO 45 PERCENT.

OVERALL, THE PERCENTAGE OF GENERAL SCHEDULE AND EQUIVALENT WHITE-COLLAR POSITIONS HELD BY WOMEN INCREASED MODESTLY, FROM ABOUT 42% TO ABOUT 47% OF THE

WORK FORCE. HOWEVER, THIS RELATIVELY SMALL INCREASE MASKED THE GAINS SHOWN FOR WOMEN IN GS GRADES 7 THROUGH 15. GAINS IN THESE GRADES INDICATE THAT WOMEN ARE ENTERING THE "PIPELINE" FOR HIGHER PAID OCCUPATIONS AND OCCUPATIONS WITH THE POTENTIAL FOR ADVANCEMENT THROUGH THE WHOLE GS GRADE RANGE. FOR EXAMPLE, WHILE WOMEN COMPRISED ABOUT 21 PERCENT OF THE WORK FORCE IN GRADES 7 THROUGH 15 IN 1974, THEY COMPRISED ABOUT 32 PERCENT OF THOSE GRADES IN 1984. AN EVEN GREATER PERCENTAGE INCREASE RESULTED FOR GRADES 11 THROUGH 15. IN THOSE GRADES, WOMEN WENT FROM ABOUT 9 PERCENT OF THE WORK FORCE IN 1974, TO ABOUT 21 PERCENT IN 1984.

WE BELIEVE THESE DATA INDICATE THAT PROGRESS IS BEING MADE AND THAT WOMEN ARE ADVANCING INTO OCCUPATIONS AND JOBS OF INCREASING RESPONSIBILITY. OPM REMAINS DEDICATED TO THE SETTING OF FAIR STANDARDS WHICH ARE CONSISTENT WITH RELEVANT LAWS AND FAIRLY ENFORCED. AS THE GOVERNMENT'S AGENCY FOR PERSONNEL MANAGEMENT, WE BELIEVE THAT OUR PAY SYSTEMS CURRENTLY ESTABLISH PAY WITHOUT RESPECT TO SEX, AGE, OR RACE.

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED STATEMENT. I WILL BE HAPPY TO RESPOND TO ANY QUESTIONS YOU OR THE SUBCOMMITTEE MAY HAVE.

Senator **Stevens**. Our next witness is Mr. Morris B. Abram, Vice Chairman of the U.S. Commission on Civil Rights.

TESTIMONY OF MORRIS B. ABRAM, VICE CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS, ACCOMPANIED BY JUNE O'NEILL, ECONOMIST, CONSULTANT TO THE COMMISSION

Mr. **Abram**. Mr. Chairman, I am accompanied by Miss June O'Neill, who is a scholar of the Urban Institute and a consultant to the Commission.

Senator **Stevens**. Miss O'Neill, it is nice to have you with us this morning.

I might say for the benefit of all concerned that the hearing today will have to terminate at 11:45 because of a conflict.

We are pleased to have you here. I would be happy to have your statement. It will be printed in full in the record. We would like for you to proceed as you wish.

Mr. **Abram**. Thank you, Mr. Chairman. I have filed a statement. I shall not read it.

I am sorry that Senator Gore is not here because if he had been, I would have commented upon the fact that for years I have known his mother and father and the distinguished Senator and his equally distinguished mother, because I think that family has illustrated the comparability of talents remarkably conjoined in both husband and wife and mother and father.

As the committee knows, the U.S. Commission on Civil Rights has examined the issue of comparable worth. We did it by hearing testimony for 2 days from 16 witnesses who were equally balanced between those who favored and those who didn't favor the principle of comparable worth. These were scholars, lawyers, activists, people of great distinction, including the former Secretary of Labor in the Carter administration, Secretary Ray Marshall, who testified I think generally in favor of the principle.

And then the Commission staff deliberated and studied the matter for some 9 months and the Commission debated the matter and voted a series of findings and recommendations which were essentially against the principle of comparable worth.

Now you have asked specifically that we testify with respect to certain issues. The testimony that I shall now deliver orally, sir, subject to your approval, will deal with the following issues which we think are of paramount importance: First, the amount of wage gap; second, the measures that have been taken to deal with discrimination with respect to the employment of women in our society; third, the effect that these statutes have had, that is the trend line on the gap; then the questions of discrimination, the meaning and usages of comparable worth; I think the implications of the adoption of any principle of comparable worth; and finally, the usefulness of the methods suggested by the Comptroller General in his report which is before us.

I turn, sir, to the wage gap. There was no doubt discrimination against women in the wage market unchecked by law, Federal law that is, prior to 1963. However, the 1963 act legislates the mandate of the Federal authority that there shall be equal pay for equal work, and I have had the opportunity to litigate at least five cases under that act.

Then we had the 1964 act, title VII, which in the case of Gunther, well known to you, the Supreme Court held that title VII ensures the protection of women against discrimination in wages beyond the provisions of equal pay for equal work.

Since the adoption of the 1963 act and the 1964 act, a revolution has taken place with respect to the employment and pay of women in this country. I think perhaps the mood of the country has been dramatically affected. Many of us saw last night the graduation ceremonies at the military academy and naval academy in which there were a great number of women who graduated from these academies that previously had barred female students.

However, some of us who are old enough to remember the Minimum Wage Act, the Fair Labor Standards Act, know that it takes time even to enforce an act as clear as the Minimum Wage Act. But you see very little litigation about the Fair Labor Standards Act today as compared to the forties and fifties.

The enforcement of acts is inexorable. They not only change the actual physical circumstances, but they change the hearts and minds of men, to quote President Eisenhower.

Nevertheless, during the last Presidential campaign, Miss Geraldine Ferraro proclaimed wide and clearly that there was a wage gap of 59 percent between the gross wages paid women and men, though she didn't put it quite that way. She just said women are paid 59 cents out of every dollar paid to men on the average in American economic life.

Now, that figure is a figure which is quite disturbing, but it simply does not yield to analysis. When the witnesses testified before the Civil Rights Commission and were asked to disaggregate those gross figures, let me say what the results turned out to be.

Women don't work the same number of hours as men and, therefore, the 59-cent figure or the 41-percent gap, when adjusted hour per hour, becomes a gap of 28 percent, not 41 percent. Then when one looks at the cohorts, that is the groups of persons who are of lesser age, more youthful, and who are therefore benefiting by the remarkable changes that have occurred in American life, in the position and the status of women, one finds that this gap is diminished enormously.

For example, in the cohort of women between the ages of 20 to 24, the gap is not 41 percent; it is 10 percent. When one looks at the cohort of women a little older, who are still the beneficiaries of the change in mood and tradition, women between the ages of 25 and 34, the gap is not 41 percent, as Miss Ferraro and others have claimed, but 20 percent.

Then, Mr. Chairman, and Senator Evans, when you look at the wages paid single women who have never been married as compared to single men who have never been married, the gap is not 41 percent, Mr. Chairman, the gap is 4 percent, or as one of our witnesses testified, 2.4 percent. The gap is almost totally closed.

Now you haven't heard those figures, I am sure, from the proponents of comparable worth, but those are the figures.

On the other hand, Mr. Chairman, when we compare the wages of women who are married to the wages of men who are married, the gap is 31 percent. So the culprit here seems to be not the employer or the market, the culprit seems to be marriage. [Laughter.]

Now, are we going to put some proscription on marriage, because it does have an effect? I doubt it. The figures are there. But we don't hear this. When we yield to facts, logic and analysis, we get a different picture, though I am not here to deny that there still is a good deal of residual discrimination which the law has not yet effectively reached. But Rome wasn't built in a day, and the remarkable changes that are occurring in our society are making giant strides.

Now the GAO report suggests that overall, all cohorts, all wage groups, if you adjust for schooling and work experience, the gap is not 41 percent, the gap is 14 percent—leaving, so the GAO report says, at most 14 percent unexplained. And it is closing.

What are we talking about? What are we trying to disrupt the economic system about?

Now, without any doubt, the reason that this gap is closing is that formerly women could be denied access to various jobs with impunity and/or they could be paid different wages for the same work without impunity. But Congress has dealt with that as definitively as Congress or any other legislative body could possibly do in the Equal Pay Act and title VII. So the access problem has been dealt with, but it was one of the causes of the gap.

The second cause of the gap is worker preference. I know a great many skilled lawyers who prefer to work in the academy, in the law school, in the Government or as judges. They are paid a lot less than the principals in the great law firms of which I am familiar and you are familiar. But they want to be judges or they want to be academic lawyers.

I know a great many scientists out at NIH at Bethesda, doctors, who could be making four times what they are making. They prefer, for whatever reason, to work at NIH.

If I may be so bold, Mr. Chairman, I dare say that there is many a Senator, and you included, and Senator Evans, and Senator Gore, who could make a lot more in private life, but you prefer to work in the public interest.

Now this is also true of women. In the Public Interest magazine, winter issue of 1981, there was a remarkable article about the XYZ corporation—it turned out I think to be Delta Airlines—who was sued in a sex discrimination case on the basis of disparate wages paid and disparate promotions really in employment of women and men.

Essentially what it amounted to was ticket agents tended to be women and the supervisors tended to be men and Delta was sued. It looked like a marvelous case. The figures were awful, just awful. But when Hoffman Associates, a distinguished academic firm of analysts from the University of North Carolina, did a survey across the country, they found that there was an indisposition of women to relocate naturally to another place where they might be a supervisor when it meant they had to take their children out of school and leave places where their husbands wished to remain.

Now I am not going to argue with you that maybe men should move and women should stay or vice versa. I am not going to argue with you about the tradition. But the fact is it was free choice that caused women to refuse these promotions that involved a job transfer. But you can't change American life by law. You can only deal with discrimination.

Now, certainly there is another reason assigned by some of the proponents of comparable worth for the disparity in the wage gap, such as it exists. I had a debate the other night on Cable News Network with a feminist attorney from Los Angeles who flatly asserted the reason women were paid less than men was there was a nationwide conspiracy. You hear that, that women are assigned to certain jobs.

If you can imagine all the employers of this country and all the governments—State, municipal and Federal—getting together in a nationwide conspiracy to depress the wages of women, then that is a reason that the GAO couldn't find or the 14 percent, overall, which they can't explain.

Now the GAO suggested some studies. I would like to turn to discuss that. They discussed and suggested that there be an economic analysis. The Commission engaged in such an economic analysis which tried to consider the questions of work experience, schooling and the intermittency of female employment and, therefore, the lack of continued seniority status on the job. We think that is a very good thing, and the GAO recommended it and we certainly support that.

We also believe that there is more that can be done in the Government classification system. On the bottom of page 6 and 7 of my filed testimony, I state exactly what we do support. One study would use survey data to compare tbe pay that workers with similar characteristics receive in the private sector, in State and local employment, and in Federal employment, to determine if the Federal Government is paying on a different basis for men and women, and if those in female or male dominated occupations are rewarded similarly in Federal employment relative to the market.

Another study would examine why women and men are in different grades in Federal employment. This would seem, we say, to be a logical companion to an economic analysis of the pay gap in Federal employment.

Now Senator Evans, I don't know whether you were reading from a statute or a regulation—I am not familiar with it—but you remember you spoke of the term equal pay for jobs of equal value.

Senator **Evans**. Comparable value.

Mr. **Abram**. Comparable value. Value in my judgment, and I studied economics a long time ago, is a market concept. I don't think the idea of comparable pay was generated until fairly recent times.

But in any event, we do feel that that part, the economic analysis, and a limited study of Government pay scales, as suggested by the GAO, might well be done.

We are opposed, however, to any suggestion that there be a job evaluation of the Federal civil service on the basis of comparable worth. I would point out to you that in the GAO report, they note very specifically the pitfalls in such an investigation. We rejected such studies, that is the Commission, as a way to prove sex discrimination.

Let me tell you why. First, once you have removed the barriers to entry into a job and once you have prohibited the use of sex in terms of either setting pay scales or in promotion, you have made the market open and free to all, regardless of sex. The market is the American way to establish pay scales—not a bureaucracy, not Government fiat, not legislative fiat—because, Mr. Chairman, if one wants to begin to deal with something other than the laws of supply and demand, one gets into the Subjective consideration of what is something worth to me?

Now you said, Senator Stevens, something that resonated with me because I feel the same way. The file clerk is infinitely more valuable to me than many a first-year lawyer who may make $50,000. But are we suggesting that file clerks on that basis be elevated to $50,000, or are we suggesting that the first-year lawyer be reduced to $15,000 or $18,000 by fiat? That is what we are talking about.

When one speaks of the value of anything that is evaluated in a market, one may well ask why are soybeans so cheap and chocolates so dear? Why are babysitters so dear and legal assistants so expensive? Why are the persons who drive an ambulance and give first-aid paid so little as compared to Doctor Jay or Billy Martin? Who is performing the greater service to society? What is more valuable, water or diamonds?

As long as you have free movement, you have a self-adjusting mechanism. Now I admit, when the movement isn't free, when there is blockage of discrimination, then you have another problem. That is one of the reasons why we oppose the job evaluation technique of trying to find what the Federal civil service should pay.

Let me turn to the second reason. Any job evaluation will have to be subjective, as the GAO recognizes. Now let me take your State, Senator Evans, Washington State. In the case of AFSCME, you had a study conducted by Norman Willis. Maybe you know him, sir. I do not know him, but I am sure he is a very qualified man. He took nurse level four in your State and he gave it 573 points in his evaluation scheme. I am sure he is a totally honest man. That is his view. That was the highest for any of the jobs that were classified. It happened to be a job that was female-dominated.

But when he turned to computer systems analysts in your State, Senator Evans, Mr. Willis said that they didn't have 573 points, they had only 426 points. Who says so? Mr. Willis.

Well, Mr. Paul Jeanneret, who did the same study in your State, found no disparity among comparable male and female jobs. I don't know whether Willis is right or Jeanneret is right, and nobody knows. That is the point. These are decisions made by people who don't have to pay the piper. These are decisions made by persons who would make decisions if we had permanent wage and salary controls in this country. Are we ready to buy that? Are we?

Baumer and Moffie in North Carolina told the Commission that the review that was used in the *AFSCME* case was absolutely cockeyed. And I know that Judge Tanner refused to even admit the testimony of Mr. Jeanneret.

But now let's look at Judge Tanner's decision. Judge Tanner's decision has had a lot of publicity. Not as much publicity as accrued to the decision much more recent of Judge Kocorus in the Northern District of Illinois in the case of *American Nurses Association* v. *State of Illinois.* He dealt with Judge Tanner's opinion in the *AFSCME* case in the State of Washington, and he found that decision to be wrong. We don't know yet what the Supreme Court of the United States or Circuit Court of Appeals will say about it.

But it is interesting to see what the Northern District of Illinois said after the Tanner decision in Washington. He said, "In deciding a comparable worth claim, a court would be compelled either to evaluate the validity of the job evaluation system used by the employer, including any external factors, and then impose a particular wage system on the employer, or, in the absence of such a system, to determine the relative worth of the job in question by a comparison of it to other jobs in the employers' establishment. Such standardless supervision by the courts is, in my judgment, unauthorized and unwarranted."

Citing the *Spaulding* v. *University of Washington* case in the ninth circuit, with which you are familiar, and which held that there was no violation of title VII, that the State of Washington paid engineering and physics professors more than they paid nursing professors in the State university system because although nursing professors may be just as valuable to those who need them, there are a lot more of them than of university professors in engineering and physics. But there were people who claimed that it was unfair. But the ninth circuit didn't agree.

Senator STEVENS. Mr. Abram, we will have to move on, I am sorry to tell you. I want to tell you I heard one thing you said very clearly. That is, you don't really object to the concept of a study. I think that is the basic thing before us. We are not dealing with comparable worth yet. We are dealing with a study.

I have to tell you that I think that chart stands out and ought to stand out to any man; and that is, it shows from the sixties, right through to today, despite the entrance of women into so many new occupations, we still have a great disparity within the Federal Government of pay under the general schedule.

We believe, those of us who are involved in this, that Congress is entitled to know whether the wage gap we still see—it is declining and I think it should decline, but we still see it as being present in our society—is in any way attributable to sex-based discrimination.

Now, you said one thing I don't agree with, and that is why should we disrupt the economic system? I don't think we are disrupting the economic system. I would be happy to introduce you to my young lawyers, and they are better than you will find in most New York firms, but we pay them about one-third the amount.

Mr. ABRAM. That is right.

Senator STEVENS. Because they want to be here. I understand that and you do. But I have to tell you, there still exists within our system rigidity—in terms of the employment of women—that may involve some discrimination from the past. That is what we want to study.

I heard you to say you really don't object to a study. You may object to the concepts that some people put into it that assume the net result of the study will in fact be comparable worth adjustments.

Mr. **Abram**. Yes, sir.

Senator **Stevens**. I have to tell you I don't make that assumption. We are going to have a study and then we will make the decisions after the study is over about comparable worth and the adjustments that may or may not be necessary.

Mr. **Abram**. I think it is important in connection with what you just said to point out that the GAO deals with the idea of a study of comparability, or job evaluation they called it, under a steering committee. I would like to show you exactly what I think is involved in that. It is something I think the Senate should pay attention to.

They suggested a steering committee. It is exactly like the steering committee you would expect anyone to suggest. I just looked at it. They say it should come from fields of equal employment opportunity—you have the civil rights establishment on one side of this question—and they would be entitled to be heard. Second, they said women's groups. Women obviously should be heard. Employee organizations, obviously they should be heard. Then they say the private sector.

So the objectivity of such a study under such a steering apparatus, which looks absolutely fair and representative, becomes very clear. Once you have engaged in a job evaluation study rather than a market study, you have to then say who is the judge, and the judge inevitably is going to be a composite judge and you are going to get a composite decision and you are going to get a decision which I think is highly subjective.

You know, Mr. Chairman, I suppose if you wanted to consider the issue of whether or not women are being discriminated against on jobs of equal value, pretty soon you will have to consider race and then you will have the question of whether a laborer should be paid, mainly black, more on a construction job than plasterers, mainly white, and eventually it is very difficult to resist and eventually you will have an inflated economy because eventually you will raise everybody's wages to the level of those of "comparable value" as subjectively determined and there will be no resistance. The labor unions will love it. Wonderful. The only people who are going to suffer are the American people. I just think this is nearing a ledge that is quite dangerous.

I think I have said about all I can, except to answer such questions as I and Miss O'Neill can. We are at your service.

Senator **Stevens**. Thank you. Senator Evans?

Senator **Evans**. In view of the time constraints and desire to hear the other witnesses—we have taken a considerable time with Mr. Abram—I just have one question for him and a comment.

Your testimony in front of us has been that of an individual and not of the Civil Rights Commission in regard to the GAO report; is that correct?

Mr. **Abram**. Well——

Senator **Evans**. Just tell me whether the Civil Rights Commission has officially adopted a report on the GAO report.

Mr. **Abram**. No, it has not. It has adopted the findings.

Senator **Evans**. Just as an individual then, correct?

Mr. **Abram**. Yes.

Senator **Evans**. Thank you.

Just a comment, Mr. Chairman. It is a very interesting, fascinating review, not much of it directed to the report and to the bill that we are detailing. A portion of it falls prey, I think, to the old adage liars figure and figures lie. I will give you the benefit of the doubt and just say it is the figures that are lying.

You mentioned the youthful wage gap diminishing, the wage gap being about 10 percent. I think it is closer to 15 percent. But do you know what the wage gap was 30 years ago for that same age group?

Mr. ABRAM. I have no idea, Senator.

Senator EVANS. Then how do you know it is diminishing?

Mr. ABRAM. Look——

Senator EVANS. You don't then?

Mr. ABRAM. I don't know, but I am reasonably sure as a man who has lived through this that it has diminished. I have experienced in my own life what do secretaries make now as compared to what they made comparably before.

Senator EVANS. You picked out a very small sector, the ages of 20 to 24, and said the gap is small and that that somehow means something. And you said quite clearly, I wrote it down at the time, that the gap was diminishing.

I think you ought to go back and look at the figures and see whether in fact that is true or whether, as is the fact, at the entry level positions, there has always been a smaller wage gap than later on. It is what happens 10, 15, 20 years after people enter the wage base that the gap begins to expand.

You also had a rather esoteric single men never married with the gap as only 4 percent. You are aware, of course, that 71 percent of the single men never married are under 24, so they are essentially the same entry level category that was mentioned, which is just a pretty good indication that you can take selective figures and make almost anything out of them.

Mr. Chairman, I think that there is an extensive number of questions that detail what I think are some fairly gross errors in the testimony Mr. Abram has submitted. I will submit those in written form.

Mr. ABRAM. Mr. Chairman, may I say I would like Miss O'Neill to state something that she has just written to me.

Ms. O'NEILL. The wage gap for those 25 to 34, in that age group, has diminished significantly over the past 10 years.

Senator EVANS. We are talking 20 to 24.

Ms. O'NEILL. In the 20 to 24 I believe it has as well 'But certanly the 24 to 35, which gives you more time to observe the effects of what happens as one gets into the labor force, there is absolutely no question. I would be happy to provide you with that data.

The gap between older women and men has not declined over the past 40 years, but that is primarily because of changes in the composition of who is in the labor force. Over time many women entered the labor force at older ages, and in the 40-year group, that had never worked before. Changes in the experience mix among the older workers kept the wage gap from narrowing.

I expect if you adjusted for work experience of that whole period, you would find there had in fact been some narrowing or women and men with the same experience.

Senator **Stevens**. Thank you. I think an objective study would bring out just what you say. I think there are many examples of women reentering the work force after they have raised their children, and an objective study would determine the impact of that as far as the wage scale is concerned.

No need to go into some experience I have had along that line, too, but as a practical matter, the classification patterns of the Federal Government may be a barrier to those women entering Federal service, except at the extremely low level, because of the failure to classify any of the experience that a woman has in raising a family and being part of the community and part of the community service group and in so many things that mothers do.

I don't think that that has ever been objectively looked at in terms of the classification process as to how women should be compensated when they do reenter the work force of the Federal Government after having had that period of the active role as a mother.

But we will submit some further questions. We do thank you.

Mr. **Abram**. I would appreciate any questions that you do wish to submit. Senator, we will reply on that 20- to 24-age group.

Senator **Evans**. Thank you.

Senator **Stevens**. Thank you, sir. I appreciate your courtesy.

[Mr. Abram's prepared statement follows:]

PREPARED STATEMENT OF MORRIS B. ABRAM

Mr. Chairman.

I am pleased to have this opportunity to express our views on the Comptroller General's report -- "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems." As you may know, the Commission has recently adopted a statement on the "comparable worth" issue which addresses many of the same questions as the GAO report.

Our statement was based on intensive hearings and review. At the hearings, witnesses representing the academic community, firms which conduct comparable worth studies, law firms, and advocacy groups, presented formal papers, participated in panel discussions, and answered questions of Commissioners. The views of the experts reflected all sides of the issue. During the ensuing nine months, Commission staff attorneys and social scientists analyzed the information presented at the hearings along with supplementary material.

Among the reasons for conducting this investigation were:

(1) to determine whether, and if so, to what extent, the "wage gap" between men and women could be attributed to sex based discrimination in the labor market, and

(2) to determine whether job evaluation studies can properly be used to measure and to correct any discrimination against women.

In other words, we took a broad look at the claims of those advocating what has come to be called "comparable worth."

THE WAGE GAP

I will begin by discussing our findings with regard to the "wage gap." First, when properly measured it is not nearly as large as we have been led to believe. For example, when campaigning for Vice President last year, Geraldine Ferraro said, on numerous occasions, that women "are paid 59¢ on the dollar for the same work as a man", implying a wage gap of 41%.(See, for example, "Ferraro Joins '84 Ticket by Acclamation", The Washington Post, July 20, 1984) The 59¢ statistic appears to be based on the gross annual earnings in 1977 of men and women working 50-52 weeks out of the year who usually, but not always, worked full-time. By 1983, the wage gap measured this way had narrowed to 36%. This statistic, however, does not adequately adjust for hours worked, and women do not work as many hours during the year as men. When measured more appropriately, in terms of hourly earnings, the wage gap was 28% in 1983 -- not 41%.

The wage gap becomes even smaller when the comparison is restricted to younger men and women whose career orientation and actual work experience are generally closer than those between older men and women. Thus, the hourly wage gap in 1983 was 10% for 20-24 year olds and 20% for those aged 25-34.

Similarly, the hourly wage gap for single (never married) men and women was only about 4%in 1983 compared to an hourly wage gap of 31% between married men and women.(Using a different definition of the wage gap, one expert testifying before the Commision found only a 2.4% income differential between single men and women in 1970. See the paper by Solomon Polachek in Comparable Worth: Issue for the 80's, Volume 1 of the consultation of the Commission on Civil Rights.) These variations by marital status surely mean that factors other than sex discrimination are involved.

The overall wage gap between men and women of all ages -- the 28% gap mentioned above -- should then be adjusted for characteristics such as schooling and work experience which are likely to differ between women and men and which would affect pay. As the GAO report acknowledges, these two factors have been shown to account for about half of the difference between men's and women's wages. Thus, starting with the 28% wage gap, we are left with an unexplained portion of 14% at most.

As the GAO report also acknowledges, the contents of this unexplained 14% differential are unknown. Some of it may be attributable to discrimination whereby women are paid less for the same work as men. Most of the differential, however, is likely to result from women holding lower paying jobs than men. There are two possible explanations why women would hold lower paying jobs:

(1) They are denied access to the higher paying jobs because of their sex. Such behavior by employers is, of course, discriminatory. However, the appropriate remedy is hardly "comparable worth" but, rather, effective enforcement of existing anti-discrimination laws.

or

(2) Like the doctors, lawyers or senators who prefer teaching or public service to a more renumerative private practice, many women accept a lower paying job than they could obtain, given their intelligence and schooling. They make this trade-off because the lower paying jobs offer working hours or other conditions that allow them to spend more time with their families. Several experts testifying before the Commission discussed the importance of these less easily measured cultural factors that influence job choice and, therefore, pay. I would also like to point out a study by Carl Hoffman and John Shelton Reid in The Public Interest (Winter 1981) that documents the differences in women's and men's stated preferences for advancement to more responsible positions within a firm. This study of the "XYZ"

> company concluded that the relatively low proportion of women among those promoted to higher positions did not reflect discrimination. It reflected differences in willingness to relocate and to other factors related to differences in roles in the home.

The key point is that the unexplained 14% wage gap is not likely to be due entirely, or even mostly, to discrimination by employers. Moreover, the form any lingering discrimination likely takes would not call for a "comparable worth" remedy. A rationale for comparable worth could only arise if women were relegated to certain jobs against their wishes and if pay in these jobs were somehow -- perhaps by pervasive conspiracy -- held below the level that would balance supply and demand. We have heard no evidence whatever documenting the existence of such a phenomenon. To the extent women are discriminated against in terms of unequal pay for the same work or are denied equal access to jobs, the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964 are the proper remedies.

STUDIES OF THE WAGE GAP IN FEDERAL EMPLOYMENT

The GAO report recommends two possible types of studies that they believe could provide insight into the male-female wage gap in Federal employment. One such study would be an economic analysis of the determinants of the wage gap. The GAO discusses many of the same studies reviewed by the Commission and draws conclusions that differ in detail, but agree in broad outline with the Commission's summary of the issue. That is, according to the GAO, a substantial amount of the wage gap between women and men can be attributed to factors such as years of work experience and schooling. The report also notes that the unexplained residual could be due to nondiscriminatory factors as well as to discriminatory factors. Thus, the GAO also concludes that the exact amount of the wage gap that can be attributed to labor market discrimination is unknown.

Economic analyses of the wage gap between men and women have provided considerable insight into the factors underlying this gap. An additional analysis of the wages of male and female federal employees may well be useful. It would, of course, be important to improve on these analyses, for example, by obtaining more detailed measures of the factors that have been identified as related to pay. Even so, it is likely that a portion of the wage gap will remain unexplained. This unexplained residual should be taken for what it is - a measure of our ignorance -- not evidence of a presumed conspiracy.

I would like to suggest two other types of studies that we believe could provide useful insights into the treatment of men and women in federal employment. One study would use survey data to compare the pay that workers with similar characteristics receive in the private sector, in state and local employment and in federal employment, to determine if the federal govenment is paying on a different basis for men and for women, and if those in female or male dominated occupations are rewarded similarly in federal employment relative to the market. Another study would examine why women and men are in different grades in federal employment. This would seem to be a logical companion to an economic analysis of the pay gap in federal employment.

Job Evaluation. The other methodology for studying the wage gap considered by the GAO report is an analysis of the value of jobs held by women and men in federal employment. The GAO notes many of the pitfalls associated with conducting such an analysis, including the inherent subjectivity of a procedure that relies on an assignment of values to job characteristics. Nonetheless, the GAO suggests that a job evaluation has merit as a way "to determine why female federal employees earn less than male employees" (see GAO cover page).

After considering all of the drawbacks of job evaluation studies, the Commission rejected such studies as a way of proving "the existence of sex-based wage discrimination." A mere disparity between two different jobs that are purportedly of comparable worth to an employer, as set forth in a job evaluation study, is by itself neither discrimination nor the result of discrimination. Other evidence must be added before a prima facie case of discrimination can be established.

There are two attributes associated with job evaluation that particularly limit its usefulness as a tool for analyzing sex based wage disparities. One is the inherent subjectivity of the concept of value. The other is the confusion over the proper role of "value" in the determination of wages in a modern market economy.

The Subjectivity of Job Evaluations. The worth of a job, or any of its component characteristics, has no single objective definition, but is in the eye of the beholder. Because of this subjectivity, the results of a job evaluation are likely to reflect the opinions of the evaluators.

Take the example of the State of Washington. In the 1970's the State hired a job-evaluation firm, Norman Willis Associates, to assist a politically selected committee in rating the jobs used as benchmarks in setting pay in State civil service employment. The Committee's task was to assign points on the basis of knowledge and skills, mental demands, accountability, and working conditions. In the 1976 evaluation a registered nurse at level IV was assigned 573 points, the highest number of points of any job - 280 points for knowledge and skills, 122 for mental demands, 160 for accountability, and 11 for working conditions. A computer systems analyst at the IV level received a total of only 426 points - 212 points for knowledge and skills, 92 points for mental demands, 122 points for accountability, and no points for working conditions.

These rating likely differ radically from the values other groups would assign. They clearly differ radically from the market's evaluation of these jobs. In the market, systems analysts earn about 50 percent higher pay than registered nurses. Such differences between the Willis assignments and market wages are found throughout the Washington State job evaluation. A clerical supervisor received a higher rating than a chemist, yet the market rewards chemists with 41% higher pay. The evaluation assigned an electrician the same points for knowledge and skills and mental demands as a beginning secretary and five points less for accountability. Truck drivers were ranked at the bottom, receiving fewer points than telephone operators or retail clerks. The market, however, pays truck drivers 30% more than telephone operators and the differential is wider for retail clerks.

The Willis study found large disparities in pay between "male" and "female" jobs and this disparity formed the basis of the well known case, AFSCME v. State of Washington. Should the state pay according to the Willis scale, or is the Willis scale faulty?

A recent paper by Professors Baumer and Moffie (See "Legal Aspects of Comparable Worth: Establishing a Criterion for Liability" by David Baumer and Robert Moffie in the North Carolina Review of Business and Economics, Spring 1985, Vol. 8, No. 3.) analyses the comparable worth job evaluation conducted by Willis in Washington State. Baumer and Moffie show that the results were subject to the biases of the evaluation committee. They note: "The Willis study not only used a subjective methodology, but also their use of statistics was primitive and transparently biased." The state called upon another job evaluator, Paul Jeanneret to perform an analysis. (See "The Economics and Politics of Comparable Worth" by Arthur Padilla, in the North Carolina Review of Business and Econonmics, Spring 1985, Vol. 8, No. 3.) The Jeanneret study fond no disparity in pay among comparable male and female jobs.(Cited by Baumer and Moffie, Ibid.) In comparing the two evaluations Prof. A. Paddilla finds that: "In every instance where the Willis method of job evaluation rated the job lower than Jeanneret's, the job was predominantly male." The Judge, however, refused to admit the results of the Jeanneret evaluation which, in the opinion of Baumer and Moffie, was more soundly based.

The two evaluations mentioned studied the same jobs and came up with different answers. The firms involved were each acknowledged experts. The two studies did utilize different methods. However, widely different results can be produced from the same method when different job characteristics are assigned different factor weights, according to the opinions of the evaluators. (See the analysis by Donald J. Treiman, "Effect of Choice of Factors and Factor Weights in Job Evaluation", in Comparable Worth and Wage Determination, edited by Helen Remick, Temple University Press, 1984.)

The Washington state case illustrates the virtual impossibility of conducting a job evaluation study regarded as an objective standard for assessing pay differences between women and men. The GAO cautiously urges that a job evaluation alone would be incomplete and should be accompanied by an economic analysis. They also recommend that a committee composed of individuals with different views be assigned the task of directing the job evaluation. Committees, however, are often dominated by those with the greatest self interest at stake.

Job Worth and Pay. A misconception that often enters discussion of comparable worth is that pay differentials should correspond to the inherent value of jobs to the the employer, independent of conditions of supply and demand in the market.

However, in a market economy, there is no reason for wages (or prices of products) to be equated with an abstract concept of value. The philosophers of the middle ages wrestled unsuccessfully with the concept of the "just price." In a modern market economy the tastes and talents of workers are highly heterogeneous, employers have complex and divergent needs, wages and prices are determined by supply and demand in a constantly changing process.

Prices and wages based on supply and demand need not conform to anyone's a piori notion of value. Diamonds are more expensive than water, not because they are more important or more valuable -- but because they are much scarcer than water (relative to their respective demands). Similarly, the baby sitter earns less than the plumber, not because we value our babies less than our plumbing, but because the supply of individuals with the skills required to babysit and the interest in doing so, greatly exceeds that of plumbers (taking account of demand).

While job evaluation may be a useful management tool for purposes such as determining hierarchies within a cluster of similar jobs, it was never intended to be the means for setting pay. This point has been made forcefully by Dr. Alvin Bellak, a general partner in the Hay Group, certainly one of the leading job evaluation firms in the country.

> In the case of food, we can measure nutritional value independent of commodity prices, but no one seriously tries to require that all differences in prices of potatoes and beef be based on those nutritional values, without consideration of supply and demand, alternative products and alternative uses of resources. In markets for labor, the same kind of separation between job value and price is a necessary characteristic of a healthy economic system in order to permit ongoing balancing of the complex sets of changing priorities and preferences based on incomplete information and imperfect judgments which are inherent within our lives. (Statement of Alvin A. Bellak to the Subcommittee on Human Resources, Civil Service, and Compensation and Employee Benefits, Committee on Post Office and Civil Service, House of Representatives, Sept. 21, 1982.)

A job evaluation study cannot, therefore, provide any reasonable standard on which to form a judgment about discrimination in federal pay practices.

Concluding Comments

The discussion in the GAO report is broadly consistent with the Commission's position on comparable worth. I agree with the GAO that a job evaluation cannot be used to measure "sex based wage discrimination." Unlike GAO, however, I seriously doubt that a comparable worth job evaluation of federal jobs could provide truly useful insights into the male-female pay gap in federal employment.

It is not that we are opposed to studies. An economic analysis of the sources of the male-female pay gap in federal employment, as suggested by the GAO, could provide important insights. We noted two additional studies of pay and of occupational placement that could prove useful as well. An economic analysis, to be sure, must contend with problems of measurement. However, the basic variables used by economists--such as years of work experience and years of schooling--are factual, not subjective. By contrast, a study of the worth of jobs is likely to reflect the subjective opinions of the evaluators.

As one expert testifying before the Commission noted: "There isno problem getting the results that you want from a job evaluation" (testimony of Professor Donald Schwab, p. 52 of Vol. II. That being the case, the results of such an exercise will not provide meaningful, objective information for guiding pay determination in the Federal sector. But, if the past is any guide to the future, we can expect that the results of the study, which can be predicted from the outset, will be used to convince and pressure the government into adopting the "comparable worth" concept.

Moreover, one can be certain that if and when the Federal Government begins to set its wages according to the results of a job evaluation study, that pressures on private industry to follow suit will multiply. The logic is inescapable. If it is discriminatory for the Federal Government to set wages without reference to the job evaluation study, than it is just as discriminatory for a corporation to set its wages accordng to the laws of supply and demand. Federal contracts would likely be the next targetted group followed by the rest of the private sector. The chaos that would result from different wage scales being imposed on different firms, depending on the results of their separate job evaluations, would quickly lead to a call for government intervention. The form of this intervention is likely to be wage boards which would set pay for different occupations according to one grand job evaluation.

It will also be difficult to limit the reach of comparable worth policy to presumed pay inequities against women. Every racial and ethnic minority can find a justification why pay in the occupations they tend to dominate is undervalued; they would surely brng their cases to the wage boards. I envision only political and social disruption under these circumstances.

The key question then is, do we really want to move to a system where pay is set by politically dominated wage boards? We live in a free economy where wages are set essentially by the impersonal forces of supply and demand. This system provides a natural mechanism for determining which skills and tasks require higher or lower pay by balancing the tastes and skills of workers with the demands of firms and consumers. If more women enter fields such as engineering and computer sales and fewer women become nurses and librarians, pay in the former will decline and pay in the latter will rise (assuming demand for these occupations does not change). The outcome of this process is efficient and it is fair. It would not be fair, of course, if women were barred from enterng the occupations they may choose to enter and for which they are qualified, solely because of their sex. Existing legislation, however, prohibits such discrimination and clearly we must insure that this legislation is enforced.

But we should remind ourselves, that, it is our free market system itself which has served to best protect our individual rights and freedoms. There is, to be sure, a problem in setting pay in a huge bureaucracy like the federal government. Seeking ways to make this system more responsive to the market seems to me to be a better goal than moving still farther away from the market to an arbitrary and subjective standard.'

Senator STEVENS. Our next witness is Heidi Hartmann. Dr. Hartmann is an economist from Washington.

Dr. Hartmann, we have been enjoined to be out of here by noon. I must leave at a quarter of. I am happy to have your testimony. Then Senator Evans will stay until noon to hear the balance of the testimony. We do appreciate your taking the time to be with us.

TESTIMONY OF HEIDI L. HARTMANN, PH.D., ECONOMIST, WASHINGTON, DC

Ms. HARTMANN. Thank you very much. Good morning. It is certainly a pleasure for me to be here today to testify on this important topic. As you know, I am an economist from Washington, DC. I am also the study director for the Committee on Women's Employment and Related Social Issues at the National Research Council, the operating arm of the National Academy of Sciences. I am here today, however, as an individual and not in my official capacity.

You may know that I served on one of the advisory committees that the General Accounting Office called together during the course of their study. I am in general agreement with their summary of the different approaches to their work. I do take issue, however, with their labeling of the two major types of studies they discussed.

The individually based earnings equation approach, also known as the human capital model, is labeled the economic approach, whereas the job-based pay equity approach is labeled the job content approach.

In my view, both of these approaches are indeed economic because they both seek to determine what is paid for in the labor market and why. GAO's labeling suggests that pay equity is in some way noneconomic. That is an impression I hope to correct this morning.

I would like to begin by making a few comments about both types of studies and then move on in some detail to the type of study I think would be most important, most relevant for the pay equity study of the Federal sector.

With respect to the individually based wage equation approach, I think it should be remembered that this kind of research has been going on for 30 years or so. Although it has come to some general conclusions, there are still areas of controversy and inconclusiveness. It will undoubtedly take many more years of research to finally resolve that inconclusiveness in those individual studies.

A request to do a pay equity study for the Federal Government could certainly be the occasion for sponsoring an awful lot of research that would keep economists and sociologists busy for many years. But I don't think that is what is at issue. We are not really concerned about the differences in individual earnings. We are concerned about differences in the relative wages of jobs and occupations. That is what pay equity is all about.

What is at issue is whether the secretarial occupation is underpaid relative to similarly demanding occupations more typically held by men and not whether the male or minority secretary makes more or less than a white woman secretary, although of course answers to those questions would also be relevant to the Government's personnel policies. Those are the types of studies you just heard Mr. Abram recommend. But for the focus on pay equity, the job content approach is much more appropriate.

I think it is admirable that GAO reviewed the literature on individuals, but I think they do give too much importance to that approach. We can learn something from it, but I don't think its relevance should be overstated.

What we can learn from that individually based approach is something I think most economists and sociologists who have used these equations for years agree on. That is that the human capital that people have accumulated over their lifetime does make a difference in what they earn.

Moreover, we generally find that these studies cannot explain all of the differences in individual pay through looking at these individual attributes. Therefore, many sociologists and economists conclude there is some discrimination going on in the labor market. The National Academy of Sciences report "Women, Work and Wages," which was issued in 1981, on which I worked, generally reviewed all of this literature and came to a different conclusion than that of the Civil Rights Commission report—that there is substantial discrimination in the labor market. If that is the case, then we can use some of the types of understandings that we get from those individual wage equations in the job-content approach.

I am trying to summarize in the interest of time.

One of the other things we learned from the individually based wage equation approach is that actually occupation does seem to have a lot to do with how this discrimination takes place. If you look at men and women who are equally qualified, but who work in different occupations, you will find that their earnings are very different. But when you look within the same narrowly defined occupation, you can generally explain more of the gap.

So actually all of this human capital approach has contributed to the comparable worth notion, to the notion that there is something wrong with the way men's occupations and women's occupations are paid, because if you stick in a variable for occupation, that makes the gap go away. Well, then, that says there is something about the occupation and the way occupations are paid that is the problem.

So I think those studies are generally supportive of the concept of comparable worth.

There is really no reason to think that a man and a woman who have the same skills should earn different amounts because one is in a female-dominated job and one is in a male-dominated job; and there is no reason to believe that jobs requiring the overall same levels of effort, skill and responsibility, and so forth, should pay differently when women do them than when men do them.

Consequently, we come to the conclusion that discrimination plays a major role. If discrimination is affecting the relative wage rates of women's and men's jobs, and much of the individually based social science research suggests it is, then realigning the wage rates of women's and men's jobs, as the comparable worth advocates suggest, makes good economic sense. Economic theory holds that human resources will be allocated more efficiently and productivity increased if we correct prices that are affected by discrimination.

Let us therefore turn to the job content approach because it can be used to measure how much discrimination may be affecting the wage rates of jobs. The job content approach essentially identifies elements of jobs that are thought to be related to their pay. It can be seen immediately that this is quite analogous to the individual wage equations I have just discussed.

The goal of job content analysis is to identify aspects of jobs that account for their pay differences. These are usually related to skill, effort, responsibility, and working conditions.

There is an underlying normative judgment involved when one uses a job content approach, and that is that the characteristics that determine pay for one job should be the same as those that determine pay for another job.

Now, comparable worth goes on to make another normative judgment, which is that those characteristics that determine pay not only should be the same from job to job, but they should not systematically differ by the sex or race of the job increments. That is, any job evaluation plan that is used to identify relevant compensable factors should not be biased by sex.

In order to believe that the same requirements of jobs should be paid similarly, even when found in different jobs, you do have to believe that the labor market should work in such a way that people can move freely to the jobs that pay best for the characteristics in question and that preferences do not differ substantially for a characteristic in one context over another context, so that the supply of people available to these different jobs is not substantially affected.

For example, if nurturing pays well in a college teaching job but pays poorly in a nursing job, then we would assume that over time enough people might switch from nursing to college teaching to equalize the portion of the wage that is paid for nurturing. In particular, we should expect that a single employer should value the same characteristics similarly in all jobs.

From the comparable worth studies that have been done, however, it appears that employers do pay nurturing differently in different jobs, and in particular pay less when it is found in women's jobs. I do not believe this is a reflection of preferences that differ systematically by sex, race, or ethnicity, as Mr. Abram seemed to suggest.

Therefore, the same economic relationship that we believe holds in individual wage equations—that there is no reason for returns to human capital characteristics to differ systematically among individuals because of their race or sex—should hold with respect to characteristics of jobs.

The underlying normative assumption of comparable worth or job evaluation is valid. There is no economic reason to expect that the pay that is accorded to the various characteristics required by jobs should differ systematically across jobs in a way that is linked to their sex, race or ethnic composition. In other words, there is a sound underlying economic basis for the use of a job evaluation or job content study.

When such studies point to systematic differences in pay for job characteristics according to sex or race, there is a reasonable supposition that discrimination has been involved; in particular, probably the substantial segregation by sex in the labor market, which means there is a lack of free movement in the market, and discrimination is probably the most important cause for these occupational wage differences between men's and women's jobs.

Consequently, both affirmative action, opening up job opportunities, and comparable worth, policies that realign wage rates, are needed to remedy the effects of discrimination in the labor market. The job-based approach can be used to identify potential discrimination against jobs.

The job evaluation studies that have been used to identify sex differences in compensation have generally found about a 20 percent differential in pay between jobs that are female-dominated and those that are male-dominated that were found to be comparable in content. This corresponds rather well to the notion that of the 40-percent gross wage gap we know exists between men's and women's jobs, we can explain about 20 percent of it, or have, with the individual characteristics.

What the job content studies are telling us is that the other 20 percent that we can't explain by individual characteristics can essentially be explained and identified as underpayment for jobs of comparable worth because women do them.

The correspondence of the findings of these two types of studies, the individually based studies and job content studies. illustrates that they share the same basic similarity. Both of them need to be thought of as economic approaches that seek to link pay differences to underlying economic variables and to identify those that cannot be so linked as discriminatory.

Now, because I think these studies are both economic and because comparable worth then represents a sensible economic policy to eliminate discrimination in the labor market, I do not think the implementation of a comparable worth policy in the Federal sector or anywhere else will be particularly disruptive to the economy, nor will the costs be enormous. Based again on the State experiences and local experiences that we have, and using the 20 percent pay difference that most job evaluation studies have found, and assuming most employers would have a work force that is about 50 percent female, what we would have then is a cost to the wage bill that is at most 10 percent. Phased in gradually, that might amount to less than 1 percent of the employer's total cost for several years; and, indeed, several large public jurisdictions that are implementing comparable worth place the costs at less than 1 percent of their annual budgets for 3 to 4 years. Should the Federal Government undertake a comparable worth study, it will most likely find effects of the same order to be remedied.

You may interpret this as leading to some comparable worth policy, but I think there is no serious reason to expect the Federal Government is going to find something dramatically different from what State and local governments have found so far.

Now there are some pitfalls in conducting pay equity studies. Some of these were raised by Mr. Abram. I think they are very well reviewed in the 1981 National Academy of Sciences report.

They will be in the testimony that I submit for the record, but I don't want to go into them now.

I think what is interesting to note is that despite these potential sources of bias in job evaluation plans, we do get similar results from all of the studies that have been conducted. No matter what plan was used and no matter how much they tried to correct it for sex bias, generally that 20 percent differential for jobs that were found to be comparable existed.

What this suggests is that these things work. We can use them. They have their faults, but we can go ahead and use them. I think the main reason they work, and it is important, is when you apply one job evaluation plan to the entire work force of the employer, that employer is essentially being constrained to pay people the same, the aspects of their job the same, the aspects of their characteristics in the same way, no matter what job they are in. The characteristic responsibility, for example, must be paid the same whether it is found in a male or female job.

Previous to comparable worth studies, job evaluation was often not used uniformly throughout the firm. Different plans were used in different sectors. Some jobs were evaluated and some weren't. Now the Federal sector has this proof, of having very many different plans. This prevents an across-the-board comparison. If a comparable worth study is done of the Federal Government, it will essentially force the Federal Government to evaluate all of its jobs the same way.

Turning to the issue of the best way for the Federal Government to conduct a pay equity study, I recommend that some of the variables that are typical of the individually based approach be added to the typical job content approach. That is, I am strongly in favor of what is called in the GAO report the combined approach, but I want to make it clear that I see such an approach as essentially a job content approach. The comparisons would be of occupations, not of individuals, because it is a goal of a comparable worth study to determine if occupations pay differently because women or minority males hold them.

The major reason for including some of the individually based variables would be to lay to rest some of the issues that are often raised by those economists and others who oppose comparable worth. It could in fact be the case that some of the differences that comparable worth studies pick up as being occupational differences are due to differences in characteristics of the individuals in those occupations. So we would include these individual characteristics in order to find out whether or not that is the case.

To give you an example, suppose on the average engineers in the Federal Government are 50 years old with continuous work experience since college graduation and that in addition to college they have 1 year of graduate work on average. And suppose nurses are on average 25 years old and have not quite 4 years of college and no postgraduate work and that, being younger, they consequently have less job experience.

Inclusion of the human capital variables might lead us tc say then, although the content required by the job was found to be the same, and I am assuming the two jobs were evaluated with a job evaluation plan that found them to be the same, even though that was true, the inclusion of the human capital variables would lead us to say that their wages should not in fact be exactly equal but that it is reasonable for the engineers to be paid more than the nurses.

I think this is the reason that the GAO emphasized these individual characteristics so much, because they assumed that using the human capital characteristics would reduce the occupational pay gap that a comparable worth type study would find.

For example, let's assume engineers are paid more than nurses right now. We do a job content study and they appear to be equal. When we add human variable characteristics, we find it is OK to pay engineers more. In that kind of case you would expect including those human variables to reduce the pay because of comparable worth.

However, I think because of discrimination that including the individual variables is going to increase the pay gap that a comparable worth study would find. That is because of discrimination, it is quite likely that women and men with similar educational backgrounds, for example, have been tracked into different career paths. The woman has been tracked to be a file clerk and the man perhaps to assistant manager and gets to move on up.

Clerk typists may be relatively overeducated for the jobs they do. The stockroom clerk job and the clerk typist job may be evaluated equally using a pure job content approach. Inclusion of human capital variables may show that clerk typists are on average better educated and have more work experience and should be paid better than, not equal to, the stockroom clerk.

Now, some of this fact of human capital characteristics could probably be included in the job content approach through better measures of the required skills of these jobs. If they are merely reflections of seniority, of course there is another way that that is taken into account in the Federal system. That is through the seniority step increases. Nevertheless, I think it is probably best to include them as separate variables to see what difference their inclusion does or doesn't make.

On balance, I would expect the average remedy for the female and minority dominated occupations to be the same regardless of their inclusion, but their inclusion could change the relative lineups of the various occupations.

I think it is very important, however, to assure that whatever human capital variables are included are legitimate. If we know, for example, that blue-eyed people earn more than brown-eyed people, we certainly wouldn't want to base occupational wage rates on that variable. We wouldn't want to pay those occupations that have more blue-eyed people in them more than those that have brown-eyed people.

Marriage, which has been mentioned here this morning, I think is a similar example. We know from the data that marriage works to a man's advantage and to a woman's disadvantage. But if somebody told me that the Federal Government was going to pay its workers according to whether or not they were married and pay married men more and married women less, and that they are doing that legitimately, I would be quite concerned.

What is really going on with the marriage variable is it is some sort of screening device for commitment. We assume that married men are more committed to the labor force and married women less committed. If we can find a good variable and we think commitment is a reasonable factor to pay people according to, then we might be able to use such a variable. But they seem like very technical decisions and they have very basic policy ramifications.

Senator **STEVENS**. I have to go, I am sorry. I do think your last comment is right. We find many times that married women with children must go home on the hour, when their 8 hours are up. But, the married man does not have that compulsion and has more of a commitment to job advancement and, therefore, there is a disparity. I think the study would show that. We have to find a way to objectively measure that in terms of the variables that you are talking about.

I am sorry, I do have to go. Senator, will you finish the hearing?

Senator **EVANS**. Sure.

Senator **STEVENS**. Thank you.

Senator Evans [presiding]. Please go ahead.

Ms. **HARTMANN**. Let me comment on a few more issues then that are related to a Federal Government job content study, pay equity study.

I am strongly in favor of a policy capturing approach rather than an a priori approach, as discussed in the GAO report, because the Federal Government is such a large and diverse employer that an a priori approach would be difficult to develop. In an a priori approach, those people developing the job evaluation plan must determine what the employer should be valuing for all sets of jobs. Although it could be done, I think it would be difficult.

One thing I would like to point out, though, is that for the most part, the a priori plans take their values from the market place. They are based on long experience with knowing what is valued by other employers and what is therefore valued in the market place. Because of this, of course, some bias due to discrimination can creep in.

In a policy capturing approach one takes the market into account much more explicitly and explicitly seeks to eliminate sex and race bias from the market study determination. A policy capturing approach is like saying we will determine what the Federal Government values by looking at what they now pay for the different jobs studied and the various job factors identified. Identifying the job factors still requires judgment, so this approach still involves judgment.

But in any case, once one has identified the factors, the rates that are given to the various factors are determined by how the employer currently pays. So no outside values enter in. However, to the extent that the market rates might be biased because of discrimination, statistical procedures are used to eliminate it.

In a paper I coauthored with Donald Treiman and Patricia Roos, I provide an illustration of how this would be done.

Ms. **HARTMANN**. The New York study also provides a comprehensive example.

It would be crucial, in my view, because of the problem I mentioned before that employers have often used different job evaluation plans for different sectors of the labor force, to make sure all workers in the Federal Government are studied in the study we are talking about, not just those in the two major classifications, the general schedule and Federal wage system.

With respect to the issue of whether to treat the Federal Government as one employer or many, I am somewhat neutral. I think there are reasons on both sides. Certainly in the end what we would hope would come out of this pay equity study would be some kind of a proscriptive job evaluation plan that could be used across the Federal Government in the future to help determine wage rates of occupations. In that sense, one would want to be looking at the Federal Government as a whole, as the unit.

An important point to be made about all of these possible types of systems is they all mimic the market place substantially. Their definitions of worth are largely market based. To a large extent this is good because it means that comparable worth policies will not disrupt the already established job hierarchy and are generally in accord with market oriented wage rates.

Of course, to the extent their mimicry of the market incorporates sex bias, they must be altered. But this alteration can be seen not as replacing the market with an abstract concept of worth but as removing the effects of discrimination from the worth that is already reflected in market prices.

Job evaluation plans work in a comparable worth sense, even when not all their sources of bias have been removed, because they are applied uniformly—because women's and men's jobs must be measured with the same yardstick. Once corrected for sex or race bias as best they can be and applied uniformly to all jobs, job evaluation plans are useful instruments to determine new wage alignments. Based on experience to date in other jurisdictions, the wages of many women's jobs are likely to be increased and the cost to the jurisdiction will not be overwhelming.

To sum up, I am in favor of a comparable worth study for the Federal Government which is essentially a job content approach. The unit of analysis should be the occupation, not the individual. But the approach should also include some average human capital characteristics for the incumbents of the occupations studied. Which human capital characteristics should be incorporated is a very technical decision with important policy ramifications.

Further, in my opinion, the job content analysis should be policy capturing, that is based on what the Federal Government has been valuing through its current system, but adjusted by removing the effects of discrimination. The plan that is developed in this manner would be used in the future to ensure that all jobs are valued in the same way without regard to the sex or race of the incumbents.

Any study should present several options for pay corrections based on some variations in some of the assumptions made in the study; for example, using the pay line of only the jobs dominated by white males versus the average pay line using some human capital variables and not others, using no human capital variables but only the pure job content approach, and so on. The alternatives that would be presented in the study could be examined through a political process, and I think should be.

Because the technical decisions that have to be made in comparable worth implementation have important policy ramifications, it is important to establish the study process that both has access to outstanding technical expertise and is politically accountable. How best to do that I leave to your judgment.

What I would like to leave you with today is the understanding that the job content approach to pay equity is based on sound economic principles and would not be inordinately disruptive to our present market-based wage system. Comparable worth can be viewed as adjusting market wages to remove discrimination, not as replacing market wages with a fuzzy concept called worth.

The worth in comparable worth is market based, but it acknowledges that with respect to jobs held by women and minorities, the market does not work perfectly and needs to be adjusted. The job content approach is as economic as any other. It seeks to look at economic relationships that underlie pay. Its goal is the identification and removal of discrimination in pay.

Thank you.

Senator EVANS. Thank you very much, Dr. Hartmann.

I was particularly struck by one of your last statements: "Comparable worth can be viewed as adjusting market wages to remove discrimination, not as replacing market wages with a fuzzy concept called worth." I think that is the area in which, at least as far as this Senator is concerned, I find the greatest amount of either inadvertent or deliberate misunderstanding on the part of those who seem to oppose any such study.

I know you have done extensive research in the area of combination analysis, and the GAO has recommended the combination of job content and economic analysis, and that they can either be done simultaneously or sequentially. Do you have any views as to which might be the preferred option and how these two can be effectively utilized or put together in any such study?

Ms. HARTMANN. I think simultaneously makes the most sense, and that is because you wind up with one structure of equations that comes up with one type of answer. In the article that I am submitting for the record, we use the dictionary of occupational titles as essentially a job evaluation tool for all the occupations in the economy, the occupations that were identified by the Census Bureau.

We average for those about 500 occupations the human capital characteristics, such as work experience and education. So those two variables, work experience and education, essentially become additional job factors in addition to those that measure skill, effort and responsibility. So when you get the sort of final job content score, you are also including in that score the effect then of these human capital variables. So I would be for doing it simultaneously.

What that approach also allows you to do is to compare the results with and without the variables, how much difference do they really make. And you could look at many occupations in detail to see whether that difference is one that should be acknowledged in the wage rates of the occupations or should be taken into account in a different way, such as simply by the fact that all the engineers that have so much experience have higher steps anyway.

So I think that doing a study in a simultaneous way would be good. It would eliminate what I see as the danger in trying to do it sequentially of spending literally years and years on the first part, the differences in wages among individuals. I think that the focus really should be on the occupation. To the extent you can incorporate some human capital variables into an occupationally based analysis, then I think it is useful.

Senator **Evans**. We will hear shortly from Dr. Polachek, but while you are still here, I would like you to comment on the human capital theory argument that an item such as education explains the wage gap between sexes; for example, arguing that women with less expected time in the labor force will train less in order to occupy those jobs where less training is required.

I find it a little difficult sometimes to believe, under that theory, why men tend to become zoo keepers and women tend to become child nutrition specialists. You would expect just the opposite to be true. But we, interestingly enough, pay more to feed our animals than to get good nutrition for our children.

Would you care to comment? In your work you found, as I understand, that quite the contrary is true. Kind of give me your side of the view and we will get Dr. Polachek's very shortly.

Ms. **Hartmann**. Yes, I am sure he will give you his side.

I think part of the human capital argument is to say that well, women just prefer to be child nutrition expects. A lot more women would rather do that than men, and a lot more men would rather be zoo keepers. So not only are there sorts of preferences very much linked to sex, but these preferences and future expectations women have, as you mentioned about responsibility for family, do govern their training.

Now, in my view, most of the research really doesn't support that. There are some mixed results. There is some support for the notion that women may have different preferences. But I don't think it is enough. It has to be enough difference to explain that huge wage gap. I just don't believe the preferences differ enough among women and men systematically to be able to account for that huge wage gap. So even if there is some preference difference, I don't think it is sufficient.

Moreover, it is a hypothesis that the kinds of jobs that women hold are the ones that accommodate easily to family responsibilities. As you just indicated, you have to train long and hard to be a child nutritionist and you don't have to train as much to be a zoo keeper. Now, one might assume as a child nutritionist you have easier access to the telephone, it is easier for you to combine your family responsibility and your job, et cetera, but we really don't have systematic studies of the characteristics of jobs right now that would really show on average that these women's jobs have these characteristics that accommodate themselves to family responsibilities. If that were the case, I don't think we would see as many women as we see in nursing and teaching. Those are not just jobs with flexible hours where you can take off easily and be easily contacted while working.

So I think that that explanation is still at the level of hypothesis and there really hasn't been sufficient evidence to support it.

Like Senator Stevens, I think we might with some objective studies find some evidence here and also some evidence on the commitment question. My own guess is based on all the research that has been done, we will never find enough evidence to account for that huge pay gap and that discrimination has still got to be a very important factor in that pay difference.

Senator **Evans**. In essence, you are saying that with the most comprehensive and objective kind of study we can put together—I would hate to characterize the results before conducting a study—but it sounds to me like you are saying that probably we will find that the statistically noted gap which we have already identified, and I think pretty accurately, within the Federal service, can be partially explained by preference, partially explained by some other things, but not totally explained, which leaves us wondering about the nature of discrimination, whether deliberate or inadvertent.

Ms. **Hartmann**. Right. Exactly.

Senator **Evans**. The Chamber of Commerce yesterday testified and made a curious observation regarding the National Academy of Sciences' report, "Women, Work and Wages," which you coauthored. They allege that the study, which I think is widely respected, rejected comparable worth because no universal job evaluation is feasible. That was their interpretation of the study. Since you coauthored it, I would like to give you the opportunity to respond.

Ms. **Hartmann**. Yes; I would like to. I am sorry I missed it yesterday.

I would like to point out, though, I was co-editor not the coauthor, and technically the report represents the views of a committee of the National Academy of Sciences, so it is a collective project.

It is true that the report actually contains no recommendations. But it does contain three conclusions. Those conclusions, in my view, and in the committee's view, I am certain, are generally supportive of the concept of comparable worth.

They do conclude although there are problems with job evaluation studies, that they are reasonable mechanisms for trying to identify discrimination in the pay rates of occupations.

I believe what the Chamber of Commerce has picked up on is the statement that we don't believe that there is any single standard of job worth. If people were looking for the Academy to come up with the magic bullet that was going to be the job evaluation plan for all employers, all over the United States and, God knows, the world, we didn't do that.

We said that to some extent what employers want to value is up to them, and that their own wage rates reflect that. That job evaluation, since it often is market based anyway, simply has to be corrected to eliminate its discriminatory components, but once that is done, the employer is free to use whatever job evaluation plan that employer most prefers. So in that sense we said there is no universal answer, but we certainly did not dismiss the concept of comparable worth.

I think most people that have correctly picked up the report is generally supportive of the concept.

Senator EVANS. Do you have any further specific comments on S. 519, the bill which would establish the proposal for a study? Do you think it is generally adequate or are there changes or modifications you think we ought to make in it?

Ms. HARTMANN. Well, I have to confess I haven't read S. 519 lately.

Senator EVANS. I tell you what we will do. I have some other questions that I would like you to respond to. If you do have recommendations on the particular bill and the study I outline and framework, I think that would be very helpful.

Ms. HARTMANN. Good; I would like to do that. I mainly want to convey I think the Federal Government should do such a study and it should then use the policy process to decide what they are going to do with the results of the study.

Senator EVANS. Thank you very much, Dr. Hartmann.

Ms. HARTMANN. Thank you.

[Dr. Hartmann's prepared statement follows:]

PREPARED STATEMENT OF HEIDI I. HARTMAN

My name is Heidi Hartmann. I am an economist and live in Washington D.C. I am also the Study Director for the Committee on Women's Employment and Related Social Issues at the National Research Council, the operating arm of the National Academy of Sciences. I am here today, however, as an individual and not in my official capacity. I would like to speak to you today about the job content approach to comparable worth as discussed in the General Accounting Office's report on options for conducting a pay equity study for federal government employees.[1]

You may know that I served on one of the advisory groups that the General Accounting Office called together during the course of their study. In general I find GAO's summary of the different approaches to comparable worth quite accurate. I do take issue, however, with their labelling of the two major types of studies they discussed. The individually-based earnings equation approach (also known as the human capital model) is labelled the "economic approach" whereas the job-based pay equity approach is labelled the "job content approach". In my view both of these approaches are indeed economic because they both seek to determine what is paid for in the labor market and why. GAO's labelling suggests that pay equity is in some way "noneconomic".

I will begin by making a few comments about both types of studies and then discuss in greater detail the type of job content study that I think would be most appropriate for analyzing pay equity in the federal sector.

With respect to the individually-based wage equation approach, it should be remembered that research along these lines has been conducted by sociologists and economists for at least 30 years and will continue to be conducted as far as we can see into the future. Several studies have been done of pay differentials among federal workers using this approach and, as in studies of workers elsewhere, they generally find that not all the earnings gap between white men and other workers can be explained by factors thought to be associated with productivity, such as schooling or work experience. In general these studies find that about half the gross pay gap between women and men can be accounted for by average differences in their individual characteristics. The nature of research is such that there will always be more that can be found out about differences among individuals in pay. Not all of these are relevant to the issue that I think motivates these hearings and motivated the request to the GAO. That issue is the issue of pay equity between the jobs held by men and women and between those held by majority and minority workers.

Using the individually-based wage equation approach would contribute to social science research and to our knowledge about pay in the federal sector. A pay equity study could provide a reason to undertake such research on a massive scale. That is, of course, up to those who request the study and pay for it. My own view is that while I am interested in such research and think it is important I think the focus of this study should be on pay equity, the relative wages of jobs or occupations, not of individuals. What is at issue is whether the secretarial occupation is underpaid relative to similarly demanding occupations more typically held by men and not whether the male or minority secretary makes more or less than a white woman secretary, although answers to these questions are also relevant to the government's personnel policies. The focus on pay equity suggests the job content approach is more appropriate. It is admirable that the GAO reviewed the literature on individual earnings differences, as some differences in pay are surely due to differences among individuals, but, in my view, their report gives too much importance to this approach. Although we can learn something from it that is relevant to pay equity, its relevance should not be overstated. A federal government pay equity project could keep economists and sociologists busy for many many years with individual earnings equations, but that would not be the best use of scarce resources.

What we can learn from the individually-based approach can be used to modify the typical job content approach taken to pay equity, but the unit of analysis should be the job not the individual. This was my recommendation to the advisory committee of the GAO project, and I will have more to say about it later. The federal government pay equity study should try to use some of what we have learned from social science research to expand or modify the traditional type of job content approach that has been developed by the private job evaluation consulting industry. What we have learned from the individually-based studies that is relevant to pay equity is that the human capital that people have managed to accumulate over their lifetimes is rewarded in the market place. Moreover, many social scientists believe that, to the extent that people with the same human capital are rewarded differently in the market place, these differences may result from discriminatory practices. Let us look at these two findings in somewhat greater detail.

In general we know that individuals with more human capital earn more in the labor market. More education, more work experience, and more on the job training generally pay off in the form of higher wages, but not always. For women and minorities the strategy of accumulating human capital does not seem to work as well, and this has led many social scientists to the conclusion that discrimination plays an important role in the labor market. Of course, there may be other legitimate reasons for the observed pay differences that have not yet been identified in the research and are not linked to discrimination. If there are such factors that explain sex-based wage differentials, however, they must be correlated with sex and uncorrelated with the explanatory variables we already know about. Most studies that have tried to identify such reasons and quantify them are not able to assign all of the difference to these reasons. There is generally a sizable pay gap left unexplained by these individual differences in human capital and other productivity related factors. This unexplained difference is a good indicator of potential discrimination, and the fact that it is especially large between women and men lends support to the argument of pay equity advocates that women are unfairly underpaid.

We also know from individually-based wage equations that the occupation of the individual has something to do with the unexplained pay gap. If we look, for example, only at college professors at one institution and compare very carefully all of their productivity related differences, articles published and so on and so forth, we are often able to reduce the unexplained gap substantially (but generally not totally). If we look across the board at individuals from many different occupations, but we include an occupational code for their particular occupation, we can again reduce the gap quite substantially--sometimes to near zero. What this suggests in general is that people who have the same human capital characteristics who work in the same narrowly-defined occupations are paid substantially similarly on average, but people who work in different occupations, although they have the same human capital characteristics, tend to be paid differently. It is this specific finding from the individually-based studies that lends credence to the specific argument of comparable worth advocates that occupational wage rates need to be realigned. Why should someone's skills and accumulated human capital pay differently in a female dominated job than in a male dominated job? Why should jobs that seem to require the same overall level of effort, skill, responsibility, etc., pay differently when women do them than when men do them?

One answer that some economists are fond of is that many more people prefer the female dominated jobs, relative to the demand for them, so that their market value is low relative to male dominated jobs that require the same kinds of education and experience or overall effort as measured by job evaluation studies. For this to be the case there must be systematic differences in tastes and preferences between women and men, as well as the normal demand differences between occupations that we would expect in any economy. Only if such differences in preferences are large and systematic could they result in a lower wage being set on these characteristics when they are found in female occupations. My own view is that such preferences do not systematically differ by sex or by race. Moreover, it has not yet been demonstrated that the preferences that women are thought to have because of their family commitments can in fact be better satisfied in female dominated jobs than in male dominated jobs. For example, if women have a preference for flexibility, for jobs which allow them to call home and be easily reached by telephone and to take time off as necessary, then one would wonder why they dominate nursing and teaching. We do not yet have a systematic study of the characteristics of jobs, so the notion that female dominated jobs better suit women's greater responsibility for families is really just a hypothesis at this point. Although some studies support the preference argument, the evidence is certainly not substantial enough to account totally for the remaining gap. So we are left again with potential discrimination, and specifically with discrimination that appears to be occupationally based. We know from other research that the more women there are in an occupation, the less it pays.[2] If discrimination is affecting the relative wage rates of women's and men's jobs, and much of the individually-based social science research suggests it is, then realigning the wage rates of women's and men's jobs, as the comparable worth advocates suggest, makes good economic sense. Economic theory holds that human resources will be allocated more efficiently and productivity increased if we correct prices that are affected by discrimination.

Let us therefore turn to the job content approach, because it can be used to measure how much discrimination may be affecting the wage rates of jobs. The job content approach essentially identifies elements of jobs that are thought to be related to their pay. It can be seen immediately that this is quite analagous to the individual wage equations discussed above. In those equations, we looked at characteristics of individuals that we believed should be related to differences in their earnings: an individual's educational attainment or accumulated work experience. With job content analysis the goal is to identify those aspects of jobs that account for the pay differences between them: the skill, effort, responsibility and working conditions required by the job. The underlying normative judgment that one is using if one advocates a comparable worth strategy (or even if one advocates the use of job evaluation in establishing pay relationships between jobs within firms) is the notion that the characteristics that determine pay for one job should also determine it for another (just as above, we believe that human capital characteristics that determine earnings for one individual should do so for another). In addition in the comparable worth approach, the value judgment is being made that the characteristics that determine pay should not differ systematically by the sex of the job incumbents, that is that the job evaluation plan that identifies the relevant compensable factors should not be biased by sex. But let us focus on the first issue first.

In order to believe that the same requirements of jobs should be paid similarly, even when found in different jobs, you do have to believe that the labor market should work in such a way that people can move freely to the jobs that pay best for the characteristics in question. For example if nurturing pays well in a college teaching job but pays poorly in a nursing job, then we would assume that over time enough people might switch from nursing to college teaching to equalize the portion of the wage paid for nurturing. Again, though, if we believe that preferences differ substantially for nurturing in one context over nurturing in the other, so that the supply of people available to these different jobs would be substantially affected, then there would be no reason to assume that the wage paid to the job factor nurturing should be the same in the two jobs.

From the comparable worth studies that have been done it appears that nurturing is paid differently in different jobs and in particular is paid less when it is found in women's jobs. I do not believe that this is a reflection of preferences that differ systematically by sex, race, or ethnicity. Therefore, the same economic relationship that we believe holds in individual wage equations--that there is no reason for returns to human capital characteristics to differ systematically among individuals because of their race or sex--should hold with respect to characteristics of jobs. The underlying normative assumption of comparable worth or job evaluation, that job characteristics should be paid the same regardless of the job in which they are found, is valid. There is no economic reason to expect that the pay that is accorded the various characteristics required by jobs should differ systematically across jobs in a way that is linked to their sex, race, or ethnic composition.

The economic argument that underlies the job content approach is the same as that which underlies the individual wage equation approach. It is an assumption that many economists and sociologists have accepted--that given a reasonable amount of free movement in the labor market we would expect that pay to job or person characteristics would be reasonably the same and would not differ systematically with respect to sex (or race or ethnicity). Therefore when we find such systematic differences we are willing to make the judgment that discrimination probably plays a significant part in causing the differences. With respect to systematic differences in pay for job characteristics, the substantial segregation by sex that exists in the labor market, which represents lack of free movement, is probably the most important cause. What this line of argument suggests then, is that both affirmative action, opening up job opportunities, and comparable worth, policies that realign wage rates, are needed to remedy the effects of discrimination in the labor market. Just as individually-based wage equations can be used to identify potential discrimination against individuals, job-based wage equations (job content analysis) can be used to identify potential discrimination against jobs.

The job evaluation studies that have been used to identify sex differences in compensation generally find about a 20 percent differential in pay between jobs that are female dominated and those that are male dominated that were found to be comparable in content. This corresponds rather well to the notion that of the 40 percent gross wage gap that we know exists between men's and women's wages that we can explain about 20 percent, or half, with factors related to individual productivity differences between men and women. The 20 percent that is unexplained by individual characteristics is in essence explained by these job evaluation studies that identify it as underpayment for jobs of comparable worth approach. When the rating of men's and women's jobs according to their content is held constant, female jobs are paid 20 percent less than male jobs on average. Again this correspondence in the findings of the two types of studies simply illustrates that there is a basic similarity between the individually-based approach and the job content approach. Both of them need to be thought of as economic approaches that seek to link pay differences to underlying economic variables and to identify those that cannot be so linked as discriminatory.

Because comparable worth policies seek to remedy the effects of discrimination, they are not, in my opinion, likely to be highly disruptive to the economy. Efficiency and productivity gains in the long run will outweigh any short term disruptions that might occur. Moreover, because comparable worth is, like other equal employment opportunity approaches, an employer-based strategy, change is likely to occur gradually. Nor will any individual employer face enormous costs. Using the average findings that job evaluation studies point to, a 20 percent pay difference between comparable jobs that needs to be remedied, and given that generally half an employer's work force is female (and that not all of them work in the most-female dominated jobs), the portion of the wage bill that is at issue is 10 percent. Phased in gradually, that might amount to less than one percent of the employer's total costs for several years. Indeed, several large public jurisdictions that are implementing comparable worth place the costs as less than one percent of their annual budgets for three to four years. Should the federal government undertake a comparable worth study it will most likely find remedyable effects of the same order.

There are some pitfalls in conducting pay equity studies, though I do not believe the major ones are economic, as so many people seem to believe. They are, in my opinion, largely issues related to the second issue raised briefly above, the development and implementation of job evaluation plans that are free of bias based on sex (or race or ethnicity).

It is possible that many job evaluation plans in use today are sufficiently biased that on average they would not uncover discrimination. Job evaluation generally has three parts, describing jobs, identifying and weighting compensable factors, and rating each job according to the compensable factors. In each of these processes bias can occur. Common factors used are skill, effort, and responsibility. Each job is rated according to these factors and the total job worth score is determined by the ratings on each factor and by the weight each factor has been given in the plan. Male dominated jobs may be systematically described in more detail with more of the job tasks relating to the compensable factors pointed out. With respect to female dominated jobs, we may find that there is bias in rating. There is, of course, some subjectivity in rating as well as in describing, and because many people in our society seem to devalue what women do, women's jobs may tend to be undervalued in the rating process. Third, we may find that the weighting process is biased. If mainly factors that tend to be found in male jobs are thought to relate to wages and are identified as compensable factors, and if these are more heavily weighted then those that are found in female jobs (some of which may not even be identified), then sex bias can certainly affect the weights. The National Academy of Sciences study pointed out these sources of bias and suggested various remedies for them.[3]

Despite these potential sources of bias in job evaluation plans, it is interesting to note that in many of the state or local level comparable worth studies that have used job evaluation similar findings emerge. No matter which job evaluation plan is used or how much they do or don't correct it for sex bias, the 20 percent differential generally appears. What this suggests is that, although the job evaluation plans can be refined and their potential sources of bias eliminated, we are getting consistent results that are also consistent with other research. I do not want to minimize the problems with the existing plans, but I do want to point out that they have been used with some success. I believe the inadequate plans that we have "work" primarily because in a comparable worth study, the employer is constrained to use one job evaluation plan across an entire work force. In essence the employer is constrained to determine pay for men's and women's jobs in the same way. The characteristic responsibility must be paid the same whether it is found in a male or female job. Previous to comparable worth studies, job evaluation was too often not used uniformly throughout the firm. Different plans were used for different segments of the firm, or perhaps a plan was used for clerical work but not for management jobs or for blue collar jobs but not for clerical jobs. In most state and local governments, and in the federal sector, several different plans are currently used. This prevents an across-the-board comparison. In being forced by comparable worth to make an across-the-board comparison between jobs, it is equivalent to being forced to pay everyone as though they were on the same wage equation. We know from research that males have a different and higher wage equation than females, and male jobs tend to have a different and higher wage equation than female jobs. The pay of women's jobs is generally brought up either to the "male" payline or to the average payline, but in any case the job content approach works even with a less than ideal job evaluation plan.

Turning to the issue of the best way for the federal government to conduct a pay equity study, I recommend that some of the variables that are typical of the individually-based approach be added to the typical job content approach. That is, I am strongly in favor of what is called in the GAO report "the combined approach", but I want to make it clear that I see such an approach as essentially a job content approach. As I mentioned at the outset, the job content approach would be the central method. The comparisons would be of occupations not of individuals, because it is the goal of a comparable worth study to determine if occupations pay differently because women or minority males hold them.

The major reason for including some of the individually-based variables would be to lay to rest some of the issues that are often raised by the economists who oppose comparable worth. It might be the case that some of the differences that are picked up in comparable worth studies as occupational differences are due to differences in characteristics of the incumbents.

The job content approach should be modified to include variables that measure differences in productivity between people, such as their educational achievement and their years of work experience. For example, using the job content approach alone, the nursing occupation might be found to have the same job content score as the engineering occupation. We might therefore say they should have equal pay. But, it is at least theoretically possible that these two occupations might differ systematically in the accumulated human capital of their incumbents. Suppose on average, engineers in the federal government are 50 years old with continuous work experience since college graduation and that in addition to their college education they have on average one year of graduate work. And suppose nurses are on average 25 years old and average not quite four years of college and no postgraduate work and that being younger, they consequently have less job experience. Inclusion of the human capital variables might lead us to say then that although the content required by the job was found to be the same by the job evaluation system, the people holding the job are different enough that these two jobs should not pay the same.

Including the human capital variables, then, into the job content approach allows the possibility of taking into account any possible systematic differences that might occur between occupations. Are these differences likely? Certainly data on census occupations does reveal average differences in the age and the education of the incumbents of occupations, just as surely as they reveal differences in the sex and race composition of occupations. It is my guess that GAO emphasized the individual human capital differences because they expected those differences to reduce the occupational pay gaps a comparable worth type study would find. I think it is just as likely, however, that human capital variables will work to increase the occupational differences that would be found. Because of discrimination, it is likely that women and men with similar educational backgrounds are placed in jobs differently and get into different career tracks. Clerk-typists may, for example, be relatively overeducated for the jobs that they do. The stockroom clerk job and the clerk-typist job may be evaluated equally using a pure job content approach. Inclusion of the human capital variables may show that clerk-typists are on average better educated and have more work experience and so should be paid better (not equal to) the stockroom clerks. To the extent that human capital characteristics matter they may turn out to be essentially included in the jobs content approach by refining measures of required skill or they may reflect seniority, which in the federal pay system is acknowledged in step increases. In any case, however, it is probably best to include them to see what difference their inclusion does or doesn't make. On balance, I would expect the average remedy for the female- and minority-dominated occupations, but their inclusion could change the relative line-ups of the various occupations to be the same regardless of their inclusion. Whatever human capital variables are included, it is very important to ensure that those that are added are legitimate ones. For example, if sociologists know that blue eyed people earn more than brown eyed people, we would certainly not want occupational wage rates to be affected by that variable. We would not want to pay an occupation that has more blue eyed people in it better than occupations that have more brown eyed people. We would not see eye color as a legitimate basis for pay differentials, and so we would not want it included in the human capital characteristics that are added. In fact, I am hard pressed to think of any other legitimate variables than various indicators of education acquired and experience and training accumulated that I think are worthy of inclusion. Although marital status is a variable that contributes to explaining wage differentials between women and men, I do not think it should be included in this context. Marital status works to a man's advantage and to a woman's disadvantage, but it is not something, I hope, that we feel the government should pay according to. I would not be pleased to learn that the federal government is paying married men more and married women less and doing so legitimately. The government may be using marriage essentially as a screening device to find committed men and uncommited women, but I would want them to have a much better variable with which to identify commitment if that is their intention. If we can find a good variable and we think commitment is a reasonable factor to pay people according to, then we might be able to use such a variable. While it makes sense to include some human capital variables in the job content approach, which human capitol variables are included is very important.

Let me comment on a few remaining issues in a job content study for the federal government. We have determined that a job content study can be useful to identify pay differences that are potentially discriminatory and that aggregate human capital variables (averaged for the whole occupation) can be added to the job content approach. But what kind of job content approach is reasonable for the federal government to use? I am strongly in favor of a policy capturing approach because the federal government is such a large and diverse employer that an a priori approach would be difficult to develop. In an a priori approach those people developing the job evaluation plan must determine what the employer should be valuing for all sets of jobs. Factors are identified and weights assigned to the factors based on the notion of what it is that should be valued. That could certainly be done. A proiri plans exist and could be modified accordingly. For the most part the a priori plans take their values from the market place. They are based on long experience with knowing what is valued by other employers and what is therefore valued in the marketplace. And because the market is biased by discrimination, discriminatory elements undoubtedly creep in.

In a policy capturing approach, one takes the market into account much more explicitly and explicitly seeks to eliminate sex and race bias from the values the market gives. A policy capturing approach is like saying that we will determine what the federal government values by looking at what they now pay for the different jobs studied and the various job factors identified. Identifying the job factors still requires judgment, so this approach does not eliminate all types of judgment. (Although one type of policy capturing approach uses statistical procedures to help identify the factors. In New York State, a 112 item questionnaire, filled out directly by incumbents, was used to identify factors, weight factors, and rate the jobs. The lengthy description and rating process was eliminated.) In any case in a policy capturing approach, when one has identified factors the weights that are given to the various factors are determined by how the employer currently pays so no outside values enter in. However, to the extent that the market weights might be biased because of discrimination, statistical procedures are used to eliminate it. In a paper coauthored with Donald Treiman and Patricia Roos, I provide an illustration of how this would be done. I would like to submit it for the record. Also the New York State study provides a comprehensive example.[5]

Because in the past employers have used different job evaluation systems for different sectors of the workforce, and in particular the federal government has done so, it would be crucial in my view to be sure that any study of the federal sector include some jobs in each of the pay systems, and not be limited to those in the two major classifications, general schedule and FWS. With respect to the issue of whether to treat the federal government as one employer or many, which the GAO report also discusses, I am neutral. On the one hand, we know there are agency differences in employment and pay policies now, so a policy capturing approach would be most accurate if it took these into account. On the other hand, a proscriptive job evaluation plan that would be used in the future, and that might grow out of a pay equity study, might best be government-wide. Although I generally favor a policy-capturing approach, an a priori approach is not impossible. The present FES system, which has been developed and applied in a sample of government jobs, might lend itself to expansion.

An important economic point to be made about all these possible job evaluation systems is that they all mimic the marketplace substantially; their definitions of worth are largely market-based. To a large extent this is good because it means that comparable worth policies will not disrupt the already established job hierarchy, and are generally in accord with market oriented wage rates. Of course, to the extent their mimicry of the market incorporates sex bias, they must be altered. This alteration can be seen not as replacing the market with an abstract concept of "worth" but as removing the effects of discrimination from the worth that is already reflected in market prices. Job evaluation plans "work" in a comparable worth sense, even when not all their sources of bias have been removed, because they are applied uniformly--because women's and men's jobs must be measured with the same yardstick. Once corrected for sex bias as best they can be and applied uniformly to all jobs, job evaluation plans are useful instruments to determine new wage alignments. Based on experience to date in other jurisdictions, the wages of many women's jobs are likely to be increased, and the cost to the jurisdiction will not be overwhelming.

To sum up, I am in favor of a comparable worth study for the federal government that is essentially a job content approach; the unit of analysis would be the occupation not the individual, but the approach would also include some average human capital characteristics for the incumbents of the occupations studied. Which human capital characteristics should be incorporated is a very important technical decision with important ramifications. Further, in my opinion, the job content analysis should be policy capturing, that is based on what the federal government has been valuing through its current system, but adjusted by removing the effects of discrimination. The plan that is developed in this manner would be used in the future to insure that all jobs are valued in the same way, without regard the to sex of the incumbents. Any study should present several options for pay corrections based upon the variations in some of the assumptions made in the study: for example, using the pay line of only the jobs dominated by white males versus the average pay line, using some human capital variables and not others, using no human capital variables but only the pure job content approach, and so on. The alternatives that would be presented in the study could be examined through a political process.

Because the technical decisions that have to be made in comparable worth implementation have important policy ramifications, it is important to establish a study process that both has access to outstanding technical expertise and is politically accountable. How best to do that I leave to your judgment. What I would like to leave you with today is the understanding that the job content approach to pay equity is based on sound economic principles and would not be inordinately disruptive to our present market-based wage system. Comparable worth can be viewed as adjusting market wages to remove discrimination not as replacing market wages with a fuzzy concept called worth. The worth in comparable worth is market based, but it acknowledges that with respect to jobs held by women and minorities the market does not work perfectly and needs to be adjusted. The job content approach is as economic as any other; it seeks to look at economic relationships that underlie pay; its goal is the identification and removal of discrimination in pay.

Footnotes

1. United States General Accounting Office

   1985 Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems. Report by the Comptroller General of the United States. Washington, D.C.: Government Printing Office GAO/GGD-85-37.

2. Donald J. Treiman and Heidi I. Hartmann

   1981 Women, Work, and Wages: Equal Pay for Jobs of Equal Value. Washington, D.C.: National Academy Press.

3. Ibid.

4. Donald J. Treiman, Patricia A. Roos, and Heidi I. Hartmann

   1984 Assessing pay discrimination using national data. Chapter 9 in Remick (ed.), Comparable Worth and Wage Discrimination. Philadelphia: Temple University Press.

5. Ronnie Steinberg and Lois Haignere

   1985 "The Undervaluation of Work by Gender and Race: The New York State Comparable Worth Study." Paper presented at Conference on Ingredients for Women's Employment Policy, State University of New York, Albany, April 19-20, 1985.

Senator **Evans**. I am very pleased to welcome Dr. Polachek to the podium. Prof. Sclomon Polachek, department of economics, State University of New York.

Dr. Polachek, please proceed.

TESTIMONY OF SOLOMON W. POLACHEK, DEPARTMENT OF ECONOMICS, STATE UNIVERSITY OF NEW YORK, BINGHAMTON, NY

Mr. **Polachek**. I have been asked to testify concerning the proposal outlined in the GAO report No. GGD-85-37. I am here as a nonpartisan academic. I am a member of no special interest group.

The report calls for a study of pay equity in the Federal Government. A methodology incorporating economic and job content approaches is suggested, along with the appointment of a steering committee to oversee, direct, and interpret the analysis.

After careful consideration, I agree that pay equity is an important issue. I also commend the authors of the report for their excellent survey of the literature. However, current methodologies assessing pay equity are so laden with conceptual and empirical problems that estimates of discrimination emanating from a comparable worth type study, even one as proposed in the GAO report, would clearly yield misleading results. For this reason I recommend against appropriating funds for such a study. Instead what is needed is the development of a bias-free methodology.

In what follows, first I summarize the basics of current approaches used in identifying pay inequities; second, I indicate some potential biases embedded in pay equity studies; and finally, I offer alternative strategies.

As all of you know, pay equity studies are complicated. However, in what follows I provide as succinct a graphical illustration as possible.

Pay equity studies consider only two determinants of earnings: (1) worker/job attributes; and (2) monetary rewards associated with each attribute.

If you turn to figure 1, you will see that earnings denoted as "Y" in the figure are depicted on the vertical axis.[1] On the horizontal axis are worker/job attributes denoted as "X." For illustrative purposes, I deal with only one attribute, though in reality many exist.

For simplicity, assume attribute *x* to be labor market experience and that experience and earnings are positively correlated. Thus, earnings can be graphically illustrated as an upward sloping curve depicting this positive relationship.

Separate earnings functions can be drawn for various occupations, and of course each earnings function looks different. Occupations requiring continued on-the-job training have steeper experience-earnings profiles than occupations without such training requirements. For example, this is illustrated in figure 2.[1] Occupations with high skill obsolescence, such as in the sports professions, have profiles that peak early in the work career, then fall.

Separate earnings functions also can be drawn for males and females. When they are, male profiles are usually higher and steeper. Advocates of comparable worth argue that this pay differential is prima facie evidence of discrimination. The claim is made that in order to achieve equality, female earnings should be raised to a level based on the male earnings profiles.

---

[1] See p. 202.

Altering female earnings in such a way requires the assumption that gender differences in earnings profiles result from employer discrimination. This assumption is false. Sound reasons exist for gender differences in earnings profiles.

One reason stems from differences in occupational choice. For example, individuals with expectations of high labor market intermittency choose occupations with the lowest penalties for dropping out of the labor force.

A second reason is statistical. Put simply, earnings profiles are measured incorrectly. Three main statistical problems exist: First, omitted variables, second errors-in-measurement, and third, failure to account for the interaction of worker/job characteristics.

First, omitted variables means that not all relevant worker/job characteristics are considered in defining male and female earnings profiles. Combining the economic and job content approaches as suggested by the GAO report increases the number of explanatory variables by including both personal and job characteristics. However, numerous factors such as ability, motivation, lifetime work expectations are still omitted.

Second, errors-in-measurement means that proxies instead of true values of worker/job attributes are used in computing male and female earnings profiles. For example, years of schooling are taken to represent skill requirements. Yet, 16 years of schooling is very different for one majoring in classics compared to one majoring in engineering. Even using multi-item job analysis questionnaires does not solve this problem.

Third, failure to account for the interaction of worker/job attributes means that the remunerative value of any worker/job characteristics cannot be taken in isolation. That is, these characteristics work in tandem. Mathematical ability might be of zero importance in a job requiring little education, high education might have less worth in a blue collar compared to white collar job, typing skills might be less important if performed for a low level manager than when performed say for a corporate president. In short, the remunerative value of any one personal attribute varies from job to job, and the remuneration of any job characteristic varies from person to person. Either a sequential or simultaneous application of the economic and job content approaches as suggested in the GAO report does not solve these problems.

In short, biases exist in estimating discrimination. My own computations indicate that these biases are responsible for as much as 97 percent of current discrimination estimates.

These biases are well known in the statistics literature. In fact, their existence has led some to experiment with different approaches to measure discrimination involving techniques not discussed in the GAO report.

One technique is known as reverse regression. Reverse regression views male/female wage differentials from a different vantage. Instead of asking what wage differences exist between males and females of a given set of characteristics, it asks what differences in characteristics exist for a given wage. Here discrimination is defined as the difference in skill needed to obtain a given wage.

For example, discrimination exists if females on average need more experience to obtain the same wage as males. Similar logic prevails for other worker/job characteristics. Most studies using this reverse regression approach find little, if any, discrimination according to the above definition. For a given wage, males have similar qualifications as females.

But here, too, much controversy exists concerning the applicability of the technique. Some claim that reverse regression underestimates discrimination while the traditional pay equity approach produces overestimates. Others claim that both techniques are biased and that the extent of these biases are indeterminate. I agree with this latter conclusion.

Even if many of the statistical biases in these type analyses could be eliminated, problems still would exist. The computations involved in both pay equity and reverse regression procedures are point-in-time analyses. Both fail to consider that from time period to time period pay determinants change. Seasonal and cyclical variations have nonuniform effects. At Christmas, more sales clerks are demanded. In the summer, less teachers are employed.

Uniform pay Schedules cannot and do not account for fluctuations. Low pay in 1 month could be considered high pay in another, all depending on exogenous economic fluctuations. In no way can data be obtained quickly enough for any pay equity study to account for such fluctuation.

For this reason other techniques are needed. One approach not exploited in the literature concerns using implications of the market. Long run competition dictates that any firm consistently paying higher wages to equally productive males would obtain lower profits and eventually with competition be driven out of business.

If competition did not exist, as in regulated monopolies or the Government sector, then wage inequities could possibly arise.

However, such wage inequities would not be without symptoms. Low wages would imply shortages and unfilled positions. High wages would imply queues. Looking at vacancies, the length of time it takes to fill a vacancy, and the number of applicants for a given vacancy would all yield an indication of wage inequities.

Given the intricate testing and job assignment procedures set up under the GS system designed to be nondiscriminatory, it is likely that if discrimination were to exist, it would not be widespread throughout the entire Government. Instead, it would probably be unevenly dispersed and propagated by select division chiefs or supervisors behaving in bigoted ways. In this case discrimination need not be in pay but in terms of working environment.

In a profit motivated firm, such behavior is not likely to be tolerated since poor morale decreases productivity, and hence profits. In the Government or nonprofit sectors, such behavior is more likely to go undetected. Pay equity studies are not designed to estimate this type of discrimination. However, the market approach that I suggest which examines turnover, shortages and scarcity would yield not only information about broad pay inequity but also indications of the more subtle and probably more prevalent discrimination associated with individual bigotry.

In conclusion, it is my opinion that a pay equity study as outlined in the GAO report would be detrimental. Even when adapting the innovations suggested by the GAO, too many statistical methodological biases exist to yield meaningful results. Politicizing the issue by appointing a partisan steering committee would be equally harmful since the issues are essentially technical and not political.

Finally, the effects of altering pay schemes based on comparable worth-type studies are completely uncharted. No studies adequately assess the long-term impact of pay alterations on aggregate employment, unemployment, or growth. Nor is there research assessing the impact of comparable worth on distributional questions, such as the effect of raising female white-collar wages on the relative improvements in well-being only recently achieved by blacks. In short, rather than performing another comparable worth study of more or less the same genre, additional basic research is needed.

Thank you.

Senator EVANS. Thank you very much for your testimony. I am sure additional basic research is always a comforting thing for those engaged in the academic arena, just having come from that arena myself for the last 7 years. But we are working in a political arena and we are dealing with real people and we are dealing with real problems. The question is how we can best study them.

In your testimony, in several places, you say current methodologies assessing pay equity are so laden with conceptual and empirical problems that they would yield misleading results. Instead what is needed is the development of a bias-free methodology.

I don't know if you are familiar at all with the bill S. 519 that is designed to set up a study. I would like to send you a copy and have you comment more explicitly on that particular bill because this is trying to establish the opportunity for just such a study.

The GAO did recommend some changes. The bill itself talks about using standard objective job evaluation techniques, and we intend to add to that the economic analysis considerations of the GAO. It doesn't seem to me that requires necessarily staying with current methodologies. It may well bring together many of these other elements you suggest.

But isn't that what a study is all about, to find the best and most objective way to get to something?

Mr. POLACHEK. One, we are talking about measuring something, namely discrimination. The fact that discrimination may exist, can exist, does exist, is political. The issue of measuring discrimination is not political; it is technical. That is the point.

Senator EVANS. And that is exactly what is being attempted with such a study.

Mr. POLACHEK. Right, I agree.

Second, I did not read the bill and I would welcome seeing it, and I would be delighted to make comments.

But in terms of the methodology which you just described concerning the bill, I believe you used the words that the study would use standard objective job evaluation techniques. My point is that standard objective job evaluation techniques still contain many biases. The methodologies that we use still contain many biases. It is because of these biases that we cannot as yet estimate discrimination properly.

Now in my statement, I alluded to other methodological possibilities, such as using a market oriented approach, to see if there are vacancies or shortages or queues in certain jobs.

I do not know if the bill you are talking about, sir, calls for studies of what happens if there are vacancies or job queues, what happens if there is discrimination when one wants to fill a job. Or if one fills a job, whether the turnover would be very quick. Does the methodology consider that possible issue?

There is another methodology not alluded to in the GAO report. I do not know if this methodology is considered in the bill you alluded to. The methodology I refer to is that of reverse regression. This methology asks if employees at a given wage have qualifications that are different. I don't believe that this methodology is necessarily appropriate, but some statisticians believe very much in such a measure of discrimination.

Put differently, the study of discrimination is really relatively young. If I were a physician and came up with a new drug, I would think the FDA would be very remiss if they would permit such a drug onto the market without appropriately testing it.

I am claiming in the current methodology there are very, very serious biases.

Senator **Evans**. It has been utilized for many, many years. My first association with it was 13 years ago, and that came from my inquiry of major corporations in the Pacific Northwest who had used the same kind of thing for internal job alignments in their corporations for many years before that. So certainly the techniques are not new, not untested, and they are techniques for which we have evidence.

Mr. **Polachek**. Techniques being in existence for 13 years do not necessarily mean they are accurate and correct. Further, we don't know what the long-run implications or ramifications are of some of these techniques.

For example, we don't know what the impact of changing white-collar wages would be on blacks in blue-collar jobs.

Senator **Evans**. Isn't that true of anything you do? When you start something new, you never know the long-term consequences.

Mr. **Polachek**. Yes, sir.

Senator **Evans**. You can estimate what they will be, you hope what they will be, but that is always the case. We didn't know what the long-term consequences would be of equal pay for equal work, which was initiated 20 years ago, and we had testimony at that time, 20 years ago, from the U.S. Chamber of Commerce that the economy would collapse, the market would go to pot, women wouldn't get hired. They had all sorts of dire expectations of the long-term effects.

Mr. **Polachek**. I think there are more people that see biases in this type of a comparable worth procedure than have seen biases in the past procedures.

Senator **Evans**. I am not sure that is true, if you go back and read both the literature and testimony of 20 years ago. People embrace equal pay for equal work today. The chamber of commerce testified yesterday that they thought that was a marvelous technique. They didn't think so 20 years ago. It is just the nature of relatively new ideas that there are always questions.

I suspect that a very high percentage of people in 1905 and 1906 didn't think Wilbur and Orville Wright would get an airplane off the ground, either. The fact you don't know the long-term consequences doesn't mean you don't eventually make some move rather than just continuing basic research forever.

Mr. **Polachek**. I agree. Except that we don't have any studies really of the long-term consequences of this type of a move. It is not just that we don't have any. I am saying that there should be an optimal amount of prior knowledge.

Senator **Evans**. How are you going to get any idea of long-term consequences if you don't start and get experience? You can't find long-term consequences unless somebody has long-term experience.

Mr. **Polachek**. But there are some States which are beginning to look at comparable worth.

Senator **Evans**. More than look.

Mr. **Polachek**. But more than that, there are also some countries. It is not clear that the economy growth rate in these countries who tried comparable worth is as high as it would be if they did not have comparable worth.

Senator **Evans**. There are some communities, some States, Los Angeles and Colorado Springs for example, that have short-term if not long-term experience. It seems to me that your recommendation, if hired as a consultant to those cities, would have been don't try it, don't implement it. Isn't that true?

Mr. **Polachek**. Well, I haven't been hired by those cities.

Senator **Evans**. I know you haven't. But considering your recommendations, I suspect it would be consistant with your recommendations here, it would have been they not try it.

At what point do we try? How much information do we need?

Mr. **Polachek**. My claim is that the current studies we have of trying to estimate that part of the wage differential due to discrimination are laden with statistical biases, so laden with statistical biases that we just don't know how to perform a study to measure discrimination. That is, we don't know how to measure how much of a wage premium we would have to pay to file clerks to bring them to the so-called correct worth.

Senator **Evans**. You think there is not enough information to even get closer than we are?

Mr. **Polachek**. That is my claim.

Senator **Evans**. So that all the work that has been done in this field, yours and others, and everyone else's, hasn't brought us anything?

Mr. **Polachek**. It has brought us more knowledge, but it has not brought us the final answer.

Senator **Evans**. I am aware it hasn't brought us the final answer. What I have said, is, does all of this knowledge give us any ability to come closer than we were able to before?

Mr. **Polachek**. Yes, it has given us the ability to come closer.

Senator **Evans**. Shouldn't we try to make at least some modest step closer to eliminating discrimination, even if we are not perfect in doing so?

Mr. **Polachek.** But suppose we make a mistake that is very serious. Suppose we take air, which is so valuable and yet free, and we decide to raise the price of air to be like the price of diamonds. Then what would happen? Diamonds, of course, don't have much worth to us. Air is very valuable. Suppose we raise the price of air. Of course, we could do it. But what would be the implications of such a move? Look at how many people would die due to lack of air.

Senator **Evans.** I don't think that even remotely is a good analogy.

Mr. **Polachek.** That might be one illustration.

Senator **Evans.** What you said is we do know more now. We know now better than 5, 10, 15, 20, 25 years ago what those factors are or how to study those factors. If we know better now, how much more do we need to know before we move toward a better answer? Presumably we know a good deal now. That shouldn't lead us to making air as valuable as diamonds. It should lead us closer, not further away, from the fact we know something and know quite a bit.

Wouldn't you agree that if you have more knowledge now than you had before, you have a chance to get closer rather than further away from the answer?

Mr. **Polachek.** I agree we have a chance to get closer.

Senator **Evans.** If we have a chance to get closer, shouldn't we take that chance?

Mr. **Polachek.** I don't think the methodology is anywhere good enough. Plus I think that a lot of the practitioners who do many of these comparable worth studies do not fully understand all the biases which exist.

Now, if we can do a study that gets at the methodologies of measuring discrimination, or incorporates some of the suggestions that I suggested, we might get closer. But I am claiming that we don't know how to measure this discrimination. We just don't know how to measure it.

Senator **Evans.** We may not know how to measure it perfectly, but we know more about how to measure it now than some years ago, which I think you just stated. If we do, then there is nothing preventing——

Mr. **Polachek.** That is correct. But if we take some of the numbers we heard before, where there is an average male-female wage gap of 41 percent, females earning 59 cents on the dollar, then we look at the single, never married females and find relative parity at 4 percent difference, what are we taking that to mean about discrimination? Does that mean that married women are being discriminated against and single women are not?

Senator **Evans.** No, we take that to mean that they are virtually all at the very beginning of the wage ladder where there never has been the extensive nature of disparity there is among those who have been in the labor force.

Mr. **Polachek.** Why is it at the beginning of the "wage ladder" there are very small wage differentials and yet farther along there are large wage differentials?

Senator **Evans.** That is what the study is designed to find out.

Mr. POLACHEK. One of the reasons for that, as studies indicate, is as people go up through their working life, there are certain investments and training, on-the-job training, both specifically in the company and what they call general on-the-job training. Different people have different incentives to acquire on-the-job training. If one expects to be intermittent in the labor market, just as an example, then there are incentives to buy less training and have a different lifetime wage profile.

But the comparable worth studies want to have the same earnings profile for all jobs based on each of these characteristics. So if the comparable worth people in the studies claim to have the same wage profile based on these characteristics, like experience on-the-job, then that would be wrong because experience is worth different things on different jobs, depending upon the training requirements.

Senator EVANS. Isn't that easily factored into a measurement of the job?

Mr. POLACHEK. It is not easy to factor in. It is very complicated to factor in. People don't do it right. That is the problem. Plus there are interactions because the effect of on-the-job training might affect the worth of schooling.

So it is not just a question of the sequential method or simultaneous method. There is a whole set of interactions which just aren't even considered.

Senator EVANS. I am not so sure they are not considered because I think they can be encompassed within the general nature of economic and job content analyses.

You mention in your testimony that "Combining the economic and job content approaches, as suggested by the GAO report, increases the number of explanatory factors by including both personal and job characteristics. However, numerous factors, such as ability, motivation, lifetime work expectations are still omitted."

It seems to me that those deal more with merit of an individual rather than the nature and the base pay at least of a job. I don't think there is anything in either private or public employment that should prevent us from paying individuals more or less based on particular merit or particular individual ability. But that doesn't have anything to do with setting the job classifications base pay itself. It seems to me you are mixing two very different things here.

Mr. POLACHEK. I don't think I am mixing two different things. As I understand the GAO report, it is to look at both individual characteristics and job characteristics in determining the pay. They both do interact. Experience is definitely more valuable to someone who is highly motivated because they in their job will acquire more training, are more eager to work longer hours, and so on.

Senator EVANS. That doesn't have anything to do with how much you pay a nurse or pay anybody. You establish the pay for that job. It is when you fill it with an incumbent, you fill it with the best incumbent, the one most highly motivated and one who has the best ability. That one will probably move up the job ladder. But that doesn't determine the job itself.

Mr. POLACHEK. Right.

Senator EVANS. That is a job without an incumbent.

Mr. **Polachek**. That is right. There are two issues there. One is whether we do these studies, we really are looking at incumbents and not just jobs. The reason we are looking at incumbents and not just jobs is because we are taking these characteristics of a job and relating it to the market, relating it to the wages that people receive—in other words, the individual members of these jobs—and we are looking at the characteristics of these members. It is not just a job. So there are workers in these jobs that we are looking at.

Senator **Evans**. Do you advocate that should be included or that should be factored out?

Mr. **Polachek**. It should be included in the study.

Senator **Evans**. It should be factored out of your decisions.

Mr. **Polachek**. Yes.

And second, when we look at the job, we sometimes make a mistake in looking at the job at a point in time. But the thing is that people, when they go into the labor market, they often are choosing a career. A job at one particular point in their life is just looking at one part of their whole career. It is sometimes misleading to look at just the job instead of where that job takes you.

For example, there is job called management trainee. Management trainee is a job where corporations take on college graduates or MBA's at a relatively low pay to train them and show them all the workings of the corporation. If in fact they succeed and do well in this management trainee type job, then in fact they could move on to middle management and higher management positions.

But management trainee jobs receive a very, very low pay, given the work that they do. But people are willing, participants, potential employees, are willing to gamble and take this low pay because they have a chance for high pay in the future.

Just as young lawyers are willing to take a relatively low pay in a Wall Street firm, perhaps, to achieve a very, very lucrative partnership.

Senator **Evans**. The last time I looked at beginning pay in a Wall Street partnership, I wouldn't characterize that as low pay. Quite the contrary. [Laughter.]

Mr. **Polachek**. Relative to what? Relative to physicians who just come out?

Senator **Evans**. Yes.

Mr. **Polachek**. Well, I don't know. Per hour? Most young lawyers I know are working 70-hour weeks.

Senator **Evans**. I suspect most physicians do, too. But that is beyond our responsibility here.

You mention on page 5, "Long-run competition dictates that any firm consistently paying higher wages to equally productive males would obtain lower profits and eventually with competition be driven out of business."

I thoroughly agree with that. Any firm halfway smart which consistently pays higher wages is likely to attract and hold more productive males, not equally productive males. Isn't that the very nature of the marketplace?

Mr. **Polachek**. That is right. If they attract more productive males by paying a higher wage, then that will enhance their profits and they will survive.

Senator **Evans**. Then it seems to me your statement is really kind of a non sequitur.

Mr. **Polachek**. No.

Senator **Evans**. What firm is going to consistently pay higher wages to equally productive males? Sure, it is obvious they would be less competitive.

Mr. **Polachek**. That is right. So the question is why then don't they hire women at this lower wage and therefore seek out more profits? And the other firms, who are silly enough to pay high wages to equally productive males, they will be driven out of business.

Senator **Evans**. We will have to take that up with further questions.

Mr. **Polachek**. I can explain it again.

Senator **Evans**. On page 6, you talk about politicizing the issue by appointing a partisan steering committee. I guess I would have to ask what your definition of a partisan steering committee is.

Mr. **Polachek**. My definition of a partisan steering committee is having people on the committee from groups that have vested interests in this type of a study. My claim is that the measurement of discrimination, as I said before, is a technical question and the issues involved for measuring this are technical, and thus, if there is such a committee, it should be made up of technical experts and not people from special interest groups.

Senator **Evans**. Isn't the steering committee the bridge between the technical people who run the study, who carry it out and bring the results, and the decisionmakers who clearly are political?

Mr. **Polachek**. It is my understanding of the GAO report that this steering committee will have the authority to make policy decisions with respect to how the study will be carried out.

Senator **Evans**. I think that you better get a copy of the bill at least and speak to the bill and its characteristics. Partisan I think in the normal sense is identified as divided by party. Certainly no steering committee is designed to be that way. Politicizing the issue—aren't we in a political arena? What is wrong with politics?

Mr. **Polachek**. There is nothing wrong with politics. But the question is a technical question.

Senator **Evans**. No, the question is not a technical question. The analysis is a technical analysis. The question is far beyond the technical question. It is far beyond the halls of academia. It is a very political question.

Mr. **Polachek**. The measurement of discrimination and the amount of pay inequity is a technical question in that there are decisions which have to be made with respect to methodology. It is my understanding that the steering committee would make such decisions, and it is not clear to me that nontechnical people, nonexperts, should make these decisions on methodology.

Senator **Evans**. I guess I will have to relate the story of dealing with one of the Nation's most distinguished actuaries who came to the State to deal with the whole question of the amount of money necessary to be put aside for pension programs to keep them fiscally sound. That presumably is a technical and professional kind of judgment. He came in to see me when I was Governor at the initiation of the study.

After we had had a conversation of an hour—I didn't pretend to be an actuary or a technical person—I found that three of the biggest elements that would determine the results were his expectations or the expectations of someone of future wage increases of those in public service, future rates of inflation, and the future course of the economy—all of which have very strong actuarial indications.

It seems to me from your suggestion that since this is a technical kind of thing, it shouldn't be politicized, that the actuaries should make those kinds of assumptions. Is that correct?

Mr. POLACHEK. The experts.

Senator EVANS. But that doesn't make any sense. I think as Governor I was far more capable than the actuary of knowing what the future rates of State employment were likely to be, even what the future State of the economy was likely to be. I think that is precisely the relationship that ought to exist between a steering committee, hopefully composed of people who do have the knowledge in the field, who can speak both from a technical standpoint and who can also understand things from a political standpoint, because it is the bridge between the technical and the political.

Do you disagree with that?

Mr. POLACHEK. I think we disagree a little bit.

Senator EVANS. You say you disagree a little bit?

Mr. POLACHEK. Yes.

Senator EVANS. How little?

Mr. POLACHEK. We both agree that there are a lot of technical aspects. You are claiming that some of the aspects are political. I am claiming that they are not.

Senator EVANS. It is not a question whether they are political or technical. But you have to relate what is going to happen to the politics of any end result.

I guess again I will have you comment, if you would, after reading the bill. One portion of it says "The members of the Commission shall not be Members of Congress and shall, to the maximum extent practicable, be chosen from among persons who have extensive knowledge and technical expertise in the major areas of the Commission's consideration in the study."

Does that sound pretty good?

Mr. POLACHEK. I haven't read the bill so I really should not comment on that.

Senator EVANS. I think if you would be kind enough to do so, we probably will have some other written questions. We will send you a copy of the bill. We would appreciate your analysis of the bill as it relates to the potential of carrying out that study.

Mr. POLACHEK. I would be delighted to comment.

Senator EVANS. We thank you very much. You have been very helpful.

[Mr. Polachek's attachments to his statement follow:]

Figure 1

A Typical Earnings Function

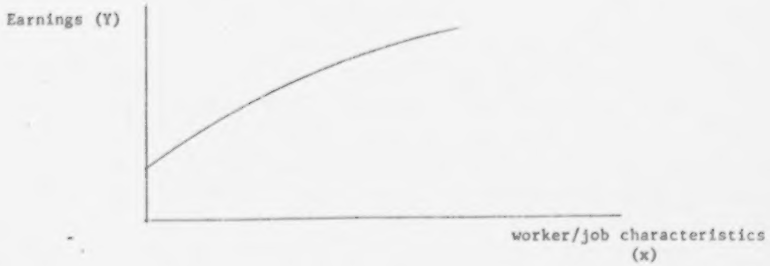
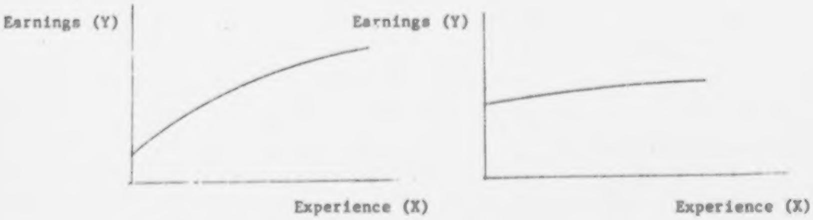


Figure 2

Occupational Differences in Earnings Functions



A. High-Training Occupation B. Low-Training Occupation

APPENDIX

Women in the Economy: Perspectives on Gender Inequality

By Solomon William Polachek*

Variations in earnings among individuals are more the norm than the exception. Hence, the analysis of earnings distribution is the subject of numerous research efforts. Although it is recognized that valid economic arguments exist for earnings variations, it is problematic to explain why certain demographic groups, such as women, blacks, or Hispanics, tend to fall in the lower tail while groups such as Jews, Catholics, and Asians are prone towards the upper ends of the spectrum.[1]

If these patterns emerge because of unequal opportunities caused by unfair hiring practices, then the economy is failing to fully and appropriately utilize highly productive employees. Macroeconomic inefficiencies thereby come about, providing a justification for governmental intervention. On the other hand, if unequal economic outcomes result from differing individual choices despite equal opportunity, then governmental intervention could lead to a distorted allocation of resources and inefficiencies within the economy. In this case, rather than helping disadvantaged groups, productive efficiency is hampered so that in the long run all end up suffering. Thus, the comprehension of demographic differences in economic success is important.

Data indicate that women are relegated to a secondary role. Relative to men, women receive lower wages and are employed in more menial occupations. Perhaps because of these obviously unequal economic outcomes, the subject of gender differentials has become an important topic not only for researchers, but for policymakers as well.

This paper examines gender differences within the U.S. economy. First, to set the stage, data will be presented. Second, one possible explanation known as the "crowding/occupational segregation" hypothesis will be presented and shown *not* to fit the data. Third, the human capital model, the only viable approach for which there is more than adequate empirical support, will be presented. Finally, a prognosis will be given, and policies promoting sexual equality will be discussed.

The Symptoms: Facts Detailing Gender Differences Within the Economy

Despite the increased role of women in the economy, women's economic position has not been comparable to men's, nor do women appear to be rapidly approaching parity. No matter what the source, data on both earnings and occupational achievement leave no doubt that women have a

---

* Professor of Economics, State University of New York, Binghamton.

[1] Barry Chiswick, "The Earnings and Human Capital of American Jews," *Journal of Human Resources* (Summer 1983), 313-36, and "An Analysis of Earnings of Asian-American Men," *Journal of Labor Economics* (April 1983).

Table 1
Gender Differences in Occupational Distribution

	1960[1]		1970[2]		1975[2]		1981[2]	
	Male	**Female**	**Male**	**Female**	**Male**	**Female**	**Male**	**Female**
Professional and kindred workers	9.7	10.5	14.0	14.5	14.6	15.7	15.9	17.0
Farmers and farm managers	5.3	3.4						
Managers, officials, and proprietors	9.6	6.1	14.2	4.5	14.0	5.2	14.6	7.4
Clerical and kindred	8.2	23.2	7.1	34.5	6.6	35.1	6.3	34.7
Sales	7.5	8.9	5.6	7.0	6.1	6.9	6.1	6.8
Craft, foreman, and kindred	18.6	7.7	20.1	1.1	20.4	1.5	20.7	1.9
Operatives	19.5	17.1	19.6	14.5	17.5	11.5	16.6	10.4
Private household	0.4	2.6						
Service workers	6.4	10.4	6.7	21.7	8.6	21.6	8.9	19.4
Farm laborers	2.9	1.8	5.3	1.8	4.8	1.4	3.9	1.3
Laborers	6.5	2.5	7.3	0.5	7.4	1.1	7.1	1.2
Occupation not reported	5.4	5.9						

---

[1] White males and females: U.S. Census, 1960, table 83.
[2] White and black males and females: U.S. *Statistical Abstract 1983*, table 648 (as taken from U.S. Bureau of Labor Statistics, employment and earnings monthly and unpublished data).

secondary economic position (not only in the U.S. but in all countries for which data exist).

Women are segregated into what some have called "women's jobs." Table 1 depicts the relatively unequal occupational distributions for 1960 to 1981. But even this table cannot detail the more subtle sex differences omitted by broad occupational categories. Whereas women seem to be sufficiently represented in prestigious occupations such as the professional category, this statistic is somewhat misleading. Professional employment includes teachers, nurses, and other relatively low-paying women's jobs within the professional category. Thus, looking at relatively broad occupations is not always satisfactory in measuring female economic success. For this reason earnings data are often used to obtain more information on the relative position of women.

Table 2 contains earnings data. Gender differences in economic well-being are clear. Using both median and mean earnings, women receive compensation (not adjusted for hours of work) at a rate of only 47 percent that of men. This figure is down from 48 percent in 1960. Data on full-time, year-round workers yield similar though smaller differentials. Again, the time trend indicates no improvement of women's economic position. In fact, no matter which way the data seem to be cut, women end up with lower relative earnings.

As indicated, explaining why women seem relegated to an inferior economic position is important. The underlying reasons yield valuable insight into understanding women's role in the economy. In addition, the reasons may be useful in devising policies to foster greater sexual equality in the future.

An Assessment of the Crowding/Occupational Segregation Hypothesis

Given the existence of both gender wage and occupational differences, there is a natural inclination to hypothesize a link between these two strands of data. In fact, the earliest theories of gender differences postulate such a relationship between wages and occupational structure. With roots at least as far back as Edgeworth (1927) and Rathbone

Table 2
Gender Differences in Income and Earnings

x Differences in Earnings by Year for the U.S.

	Male	Female	% of male
1950[1]	2434	1029	42.3
1960[2]	4532	2175	48.0
1970[2]	7319	3434	46.9
1980[3]	14536	6830	47.0

---

[1] Median income obtained from U.S. Census Summary, 1960, table 97.
[2] Computed from U.S. Census 1-1000 sample.
[3] Computed from Current Population Survey (CPS) sample.

Median Money Income by Race and Sex
(for persons 18 years old and over)

	Male			Female			Female as a percent of male		
	Total	White	Black	Total	White	Black	Total	White	Black
1975	9,426	9,891	5,967	3,642	3,703	3,250	.39	.37	.54
1980	14,296	15,117	8,983	5,749	5,819	6,114	.40	.38	.68

Median Weekly Earnings of Full-Time Wage and Salary Workers

	Male			Female			Female as a percent of male		
	Total	White	Black	Total	White	Black	Total	White	Black
1970	151	157	113	94	95	81	.62	.61	.72
1975	221	225	173	137	138	130	.62	.61	.75
1976	233	238	187	145	147	137	.62	.62	.73
1977	252	258	201	156	157	146	.62	.61	.73
1978	271	278	218	168	167	157	.62	.60	.72
1979	298	305	232	186	187	174	.62	.61	.75
1980	322	329	247	204	206	189	.63	.63	.77
1981	347	356	271	224	226	210	.65	.63	.77

Source: U.S. Statistical Abstract 1983, table 671.

(1917), this theory has become known as the occupational segregation hypothesis.[7] When applied to gender differences, the claim is that certain occupations are set aside predominantly for women, although men are free to choose the occupation of their choice. The result is that women are forced into menial occupations, thereby increasing the supply of female workers in female jobs and thus depressing women's wages. The supply to male occupations is diminished, causing wage increases. Sometimes known as the "crowding hypothesis," because women are crowded into a smaller number of occupations, occupational segregation is consistent with both a lower wage rate for women and a concentration of women in the more "menial" jobs—the two labor market patterns already observed.

Given this theoretical link, the crucial question, of course, is whether empirical support exists for such a hypothesis. That is, does the observed occupational segregation affect observed sex differences in earnings?

The procedure to test the crowding hypothesis is to compute the extent to which differences in occupational distributions can explain wage differentials. This entails assessing how male and female wages would change if occupational distributions were reversed.

One procedure is to create an index of female earnings had they a male occupational distribution, and male earnings had they a female occupational distribution.

From this index (table 3) one is then able to determine the effect of occupational segregation on wage differentials. If occupational segregation were an important explanation, then average female earnings would rise to male levels, if females had a male occupational distribution. On the other hand, if "crowding" were a weak hypothesis, only a small portion of the wage gap would be explained.[8]

To compute the explanatory power of occupational segregation, we calculate the change that would occur in wages if male and female occupational distributions were interchanged. Two measures exist: (1) Y_{FM} = average female earnings if women were given a male occupational distribution, and (2) Y_{FM} = average male earnings if men were given a female distribution. The average of these two is the degree to which these measures close the original gender earnings gap, and represents what we call the explanatory power(P). These figures are given in table 3.

It is apparent that occupational segregation is, at best, only moderately important in explaining gender differences in earnings. Only between 17 and 21 percent (for annual 1960 and 1970 earnings) or 9 and 12 percent (for hourly 1970 and 1960 wages) can be explained by occupational segregation. For narrower segments of the population, occupational segregation explains virtually none of the male-female wage differential. In fact, for the married-once-spouse-present or single-never-been-married groups, wage differentials are widened.

As shall be shown, these results outlining the insignificance of occupation are consistent with other studies. Nevertheless, the importance of occupational segregation as a determinant of wage differentials in part depends on how jobs are grouped into occupations. This problem arises because there are no natural boundaries that can be applied in defining an occupation.

As an illustration, one merely need consider an economy with an occupational classification scheme categorizing all persons into one and only one occupation. Obviously, in such an economy only intra-occupational wage differentials exist. Contrast this to an economy in which each person is considered to have a different occupation. Here all wage differentials are attributable to occupations, and hence interoccupational wage differentials explain all gender differences. In short, the importance of occupational segregation would be determined solely by the definition of occupation. The problem, then, of assessing the importance of occupational segregation becomes philosophical. Just what is the appropriate definition of an occupation?

---

[7] In this section, I concentrate on the occupational segregation/crowding model as a determinant of gender wage differences. Other theories such as Marxian-based theories or market power (e.g., monopsonistic) theories have also been exposited. None of these latter theories fit the data well. I concentrate on the crowding/occupational segregation hypothesis because it seems to have received the most attention in the literature.

[8] It is also possible that giving females a male occupational distribution would widen wage differentials. Such a case would be one in which female occupational structure was already optimal.

Table 3
The Impact of Occupational Segregation on Gender Wage Differentials

	Annual earnings		Hourly earnings		Married-once-spouse-present		Single-never-been-married	
	1960	1970	1960	1970	Annual earnings	Hourly earnings	Annual earnings	Hourly earnings
Mean female earnings	$2,391	$4,197	$1.81	$4.88	$2,332	$1.82	$2,483	$1.90
Mean male earnings	4,941	9,226	2.63	3.28	5,600	2.78	2,519	2.06
Mean female earnings assuming a male occupational distribution	2,707	5,241	1.87	3.57	2,341	1.72	2,226	1.84
Mean male earnings assuming a female occupational distribution	4,373	8,200	2.49	4.88	5,160	2.71	2,800	2.27
	.12	.21	.07	.18	.003	−.10	−7.28	−.38
	.22	.20	.17	0.0	.13	−.07	−7.94	−1.31
	.17	.21	.12	.09	.07	−.09	−7.61	−.84

Source: Computed from 1960 and 1970 U.S. Census Public Use Sample.

Table 4 contains results reported by Treiman and Hartmann,[4] in what seems to be a replication of table 3 purportedly using 1980 census data. When using 222 occupational categories, between 11 and 19 percent of the total population's earnings differentials can be explained by gender differences in occupational distribution. (This should be compared to the 12 to 21 percent explanatory power to table 3 that uses about 195 occupational categories.) Even when using 479 occupations, far more than any other study, only between 35 and 39 percent of the wages can be attributed to segregation. Still this computation is biased.

First, too many occupational categories reflect too narrow a distinction between occupational categories. If this is the case, then detailed occupational categories would become synonomous with success in one's job, which is precisely the meaning of wages in the first place. Second, the wages used in creating the indices of tables 3 and 4 are unadjusted for personal attributes. Only "raw" mean occupational wages are used. No adjustment is made for training requirements or for individual differences in personal attributes such as education, job experience, or other factors that can affect on-the-job productivity.

For this reason, an alternative approach can be used to assess the impact of occupational segregation. The procedure is to classify occupations in terms of their gender composition. Percentage female (PF) is most regularly used. The question then becomes: Holding personal and productivity attributes constant, do occupations exhibiting a greater proportion of females pay lower wages?

To answer this question, a regression is run using wages as the dependent variable. As independent variables, individual and labor market adjustment variables are used. In addition, the PF variable is included. An insignificant PF would imply that an occupation's gender composition is not a statistically important determinant of wages, thereby refuting the occupational segregation theory. However, even a statistically significant PF coefficient need not imply that occupational segregation is important. For although statistically significant, the PF variable

---

[4] Donald J. Treiman and Heidi I. Hartmann, eds., *Women, Work and Wages: Equal Pay for Jobs of Equal Value* (Washington, D.C.: National Academy Press, 1981).

Table 4

Decomposition of Earnings Differentials Between Men and Women Into Within-Occupation and Between-Occupation Components, for Successively More Detailed Occupational Classifications (1980 Census Data)

	Census Major Group Classification (*N* = 12)		Intermediate Classification (*N* = 222)[a]		Census Expanded Occupational Classification (*N* = 479)[b]	
Female Earnings as a Percentage of Male Earnings[c]						
(1) Male average earnings (annualized)[d]	100		100		100	
(2) Average earnings of women if they had same income as men in each occupation[e]	96		93		85	
(3) Average earnings of men if they had same income as women in each occupation[f]	63		68		70	
(4) Female average earnings[d]	62		64		63	
Decomposition of Earnings Differentials[g]						
	(A)	(B)	(A)	(B)	(A)	(B)
Due to occupational segregation	3	11	11	19	35	39
Due to within-occupation pay differences	97	89	89	81	65	61
TOTAL	100	100	100	100	100	100

---

[a] Aggregation of the 1973 census detailed occupational classification to a minimum of 1,000 men and 1,000 women in each occupational group (see Treiman, 1973, for details).

[b] The classification used in detailed occupational tabulations published in U.S. Bureau of the Census (1973). Formed by disaggregating selected occupations by industry and class of worker. Only data for occupations with wage and salary earnings reported are used here.

[c] Earnings are annual wage and salary earnings adjusted to account for estimated hours worked per year. Annualized earnings = annual earnings × (2,080/[hours worked last week × weeks worked last year]) since 2,080 = 40 × 53 = full-time year-round work. Data for each occupational category are either the mean or the median. The use of the median rather than the mean introduces some error into the algebraic manipulations; it is, however, very minor.

[d] Weighted average of median earnings for occupational categories.

[e] Weighted average, with female frequencies applied to male median earnings.

[f] Weighted average, with male frequencies applied to female median earnings.

[g] The portion of the gap due to occupational segregation is computed two ways: (A) = [(3) − (4)]/[(1) − (4)]; (B) = [(1) − (2)]/[(1) − (4)]. The portion of the gap due to within-occupation earnings differences is, of course, the complement of the portion due to occupational segregation.

Source: U.S. Bureau of the Census, 1973: Table 1, and the "Occupational Characteristics Summary File" computer tape (see Treiman, 1973, for a description). (copy)

Source: D. Treiman and H. Hartmann, *Women, Work, and Wages: Equal Pay for Jobs of Equal Value* (Washington, D.C.: National Academy Press, 1981), pp. 34-35.

may explain only a small portion of the gender wage differential.

Perhaps the first to apply such a framework is Victor Fuchs.[5] For this reason, I present his results in table 5 (along with his description of the variables and findings). In panel A (Fuch's table 6) the PF (percentage female) variable is not significant.[6] In panel B (Fuch's table 7) there is statistical significance, but PF explains only 6 percent of the male-female wage gap.[7]

Replication of this technique was used by Paula England[8] in an article attempting to refute the human capital approach. Her results are given in table 6. Instead of using industrywide (or occupationwide) data, as did Fuchs, she uses data on individuals as reported in the National Longitudinal Survey. Even taking England's results as given,[9] the earnings gap attributable to sex differences in occupational structure ranges between 3.2 and 9.6 cents per hour.[10] Given a gender wage differential of about $2.07, *at best, occupational segregation explains only* 4.6 percent of the gender gap in wages.

If occupational segregation fails to explain gender wage differentials, then what can explain them?

The Human Capital Approach as a Unified Theory of Gender Differences in Economic Well-Being

Gender Differences by Demographic Group

The crowding/occupational segregation theory deals only with the aggregate raw wage differential. It fails to consider other aspects of demographic differences in wages: for example, why such factors as marital status, life cycle, and family characteristics so greatly affect the size of male-female differentials.

As an illustration, consider table 7. It contains gender income ratios from 1960 to 1970. As can be seen, the ratio varies widely by marital status. Never-married women seem to have complete wage parity with never-married men. In fact, single-never-married women often have a wage advantage.[11] On the other hand, the wage gap for married, separated, divorced, and widowed men and women is extremely large. On the average, married-spouse-present women earn less than half the earnings of married-spouse-present men. The other marital status groups fall somewhere in between the married-spouse-present and the single-never-married group.

Other demographic patterns also emerge. For example, number and spacing of children affect the size of the gender wage differential. Parents with large families, with children spanning broad age bands, exhibit the largest wage differentials.

The life cycle, too, is important. Only small gender wage differentials occur in the early work phases, yet expand over the working life until about age 40, then decline. For men and women between 18 and 25, the wage ratio is about 80 percent. For 30–40-year-olds, this ratio decreases to less than 50 percent and eventually rises to about 65 percent for the 55–64-year age category.

Each of these patterns implies that the gender gap in wages is not uniform. Were the demand-type, crowding/occupational segregation theory to be valid, then it would need an explanation for these demographic differences in age differentials. To my knowledge, none exists within the context of this theory. Thus, another explanation is needed. The best is the human capital approach.

---

[5] Victor Fuchs, "Differentials in Hourly Earnings Between Men and Women," *Monthly Labor Review*, 94 (May 1971), 9–15.

[6] The t-statistic is less than 1.96 in absolute value.

[7] The total gender wage gap in Fuch's data is $1.18. (Men earn $2.84 per hour while women earn $1.66.) Men are in occupations that are 67 percent male. Women are in occupations that are about 33 percent male. The difference, 34 percent (67-33 = 34), multiplied by the coefficient -.002 (or -.0019) yields (0.07) the dollar wage change that would occur if males were to change from a typical male to a typical female occupation (or females from typical female to typical male occupations). The division of .07 by 1.18, the dollar differential, yields the percentage change in wages that would occur (5.9 percent).

[8] Paula England, "The Failure of Human Capital Theory to Explain Occupational Sex Segregation," *Journal of Human Resources* (1982).

[9] My replication differs from hers. One reason may be a different sample size, perhaps attributable to her inclusion of single females in the regressions.

[10] Computed as the product of $(PF_{\_\_\_} - PF_{\_\_})$ and $\frac{\partial W}{\partial PF}$, where $PF_{\_\_\_}$ the mean percent female of the typical occupation among women, $PF_{\_\_}$ the mean percent female of the typical occupation among men (both computed as the mean PF score in a male versus female sample), and $\frac{\partial W}{\partial PF}$ is computed from the England regressions. In these regressions $\frac{\partial W}{\partial PF}$ varies between (− .03 and − .01). It estimates $(PF_{\_\_\_} - PF_{\_\_})$ to be 3.2. (Females are in jobs that are 66 percent women while males are in jobs that are 34 percent women. Thus, 66 − 34 = 32, making 10 percent equal to one unit as her regressions indicate yield $(PF_{\_\_\_} - PF_{\_\_})$ to be 3.2.)

[11] See S. Polachek, "Differences in Expected Post-School Investment as a Determinant of Market Wage Differentials," *International Economic Review* (1975), 451–70, and S. Polachek, "Potential Biases in Male-Female Discrimination," *Journal of Human Resources* (1975), 205–29, for a more detailed analysis of the relationship of marital status and earnings.

Table 5:
Fuch's Results on Occupational Segregation
Results of regressing female average hourly earnings relative to male on selected variables across 46 industries

Item	Simple regression			Multiple regression $(\hat{R}^2 = .38)$	
	$\hat{R}$	Regression coefficient	t Value	Partial regression coefficient	t Value
Female "expected" relative to male	0.674	2.19	9.70	1.63	2.76
Percent in government	.382	.254	5.36	.145	4.70
Percent female	.015	–.136	–1.30	–0.52	–1.05
Percent unionized[1]	–.021	–.042	–.28	.023	.38
Establishment size	–.021	.018	.29	–.012	–.36
Employment growth rate	.006	7.33	1.13	4.82	1.68
Age profile[2]	.240	–37.2	–3.90	–14.1	–2.64

[1] The unionization variable is limited to the range 20 to 60 percent. All industries below or above that range are set equal to 23 or 63 percent, respectively.

[2] Age profile = $\frac{\text{Actual expected earnings, white males aged 45-54}}{\text{Actual expected earnings, white males aged 20-34}}$

NOTE: Each observation weighted by number of males multiplied by number of females, all divided by number of males and females.

Regressions of hourly earnings[1] across 46 industries, by sex

Item	Males $(\hat{R}^2 = .894)$		Females $(\hat{R}^2 = .936)$	
	Partial regression coefficient	Standard error	Partial regression coefficient[1]	Standard error
"Expected" earnings[1]	[2]1.8.5	0.118	[2]1.54	0.13
Percent in government	[3]–.0013	.0004	.0008	.0006
Percent female	[3]–.0020	.0006	[3]–.0019	.0008
Employment growth rate	[2]–.112	.039	.0229	.041
Percent unionized[5]	[2].0060	.0009	[2].0060	.0011
Establishment size[4]	[2].0009	.0004	[2].0012	.0005
Age profile	[2].367.	.080	[3].147	.060

[1] Dependent variable and "expected" earnings in natural logarithms.

[2] Statistically significant at the 1-percent level on a 2-tail test.

[3] Statistically significant at the 5-percent level on a 2-tail test.

[4] These variables refer to industry as a whole and are not specific to sex.

[5] The unionization variable is limited to the range 20-60 percent. All industries below or above that range are set equal to 20 or 60 percent, respectively.

In the regressions reported in table 6, the dependent variable is female hourly earnings as a percentage of male. The most significant independent variable, in either the simple or multiple regressions, is female "expected" earnings as a percentage of male. This tells us that the pattern of the differential across industries is highly correlated with the pattern of differences in mix of schooling, age, and color. Furthermore, we see that the differential is not related to extent of unionization or size of establishment. These results tend to support the view that labor markets are reasonably competitive. If employer discrimination was a major factor in the sex differential, we might expect that it would vary across industries in an erratic fashion or be related to such institutional variables as unionization and establishment size.

The government variable is significant as expected. The partial regression coefficient of 0.146 says that, other things equal, the female earnings relative in an industry composed entirely of government employees would be 14.6 percentage points higher than in any industry completely in the private sector. Table 7 shows that government employment tends to depress the earnings of men while raising the earnings of women.

The age profile variable is also significant. This is a measure of the extent to which earnings of white males rise with age, and I interpret it as revealing the extent to which there is labor-market-related post-school investment in human capital. The sex differential in earnings is higher in industries with steep age profiles because men are more likely than women to undertake such investment.

The higher the percentage of female employment the lower are the earnings, but this is true for men as well as women. There is no support for the hypothesis that men dislike working in the same industries as women and must, therefore, be given special compensation to do so. (Fuchs, pp 13–14)

Table 6
Regressions on White Females' Hourly Earnings

	Equation (4)	Equation (5)	Equation (6)	Equation (7)
C[illegible]tant ($/hour)	.46	.99	.48	.41
Regression coefficients (on $/Hour)				
S: Schooling (years)	.15*	.14*	.15*	.15*
Y: Years since school	.02*	b	b	b
H: Hometime (years)	−.04*	b	−.02	−.02*
P: % hometime (10% = unit)*	b	−.09*	b	b
E: Employment experience (years)	b	b	.02	.02*
F: Occupation's % female (10% = unit)*	−.03*	−.04*	−.03	−.02*
$H \times F$*	(+).00	b	(+).00	b
$P \times F$*	b	.03	b	b
$E \times F$*	b	b	(+).00	b
R^2	.16	.16	.16	.16
N	1877	1877	1877	1877
Mean hourly earnings	2.07	2.07	2.07	2.07

Source: P. England, "The Failure of Human Capital Theory to Explain Occupational Sex Segregation," *Journal of Human Resources*, Summer 1982.

The Rudiments of the Human Capital Model

The human capital theory links occupations and wages to lifetime labor force participation and the division of labor within the family. It is thus able to provide a consistent explanation for each pattern observed in the data.

1. Figure 1 depicts sex-marital status labor force participation patterns for the United States as a whole. On the horizontal axis is age. On the vertical axis is the labor force participation rate, indicating age-specific labor force participation rates. Married men, by far, have the highest labor force participation. Married women have the lowest, peaking at about 43 percent between ages 23 and 48. The drop at around age 30 reflects labor force intermittency related to childbearing. The gap between single men and single women is the most narrow. Single-never-married males and females have roughly similar [illegible]time work behavior patterns. Figure 2 emphasizes sex differences by race. The sex difference between blacks and whites is somewhat less prevalent, but the same general pattern of higher male relative to female participation emerges.

Despite the extreme sex differences in lifetime work, there are indications of some convergence, as female participation seems to be secularly rising. These secular trends are apparent in figure 3. Figure 3 also accentuates troughs in labor force behavior during the 25-year age bracket, reflecting the intermittency, or the dropping out of the labor force by women, due to childbearing and rearing.

2. **The Relationship Between Lifetime Labor Force Participation and Market Earnings**

One cannot help but note the strong similarities that exist between earnings patterns and patterns of lifetime labor force participation. For example, take single-never-married men and women. Single-never-married men and women exhibit the smallest earnings differentials as well as the smallest differences in lifetime labor force participation. The widest lifetime labor force participation differences exist among the married-spouse-present, the group with the widest wage differentials. *In short, overall gender wage differentials are related to the differentials in lifetime labor force behavior. Those with the greatest levels of lifetime labor force participation have the highest wages, while those with the least lifetime work*

Table 7
Percent Income Ratios

	United States		
	1960[1]	1970[2]	1980[3]
Married spouse present	40.0%	38.4%	38.1%
Married spouse absent	57.0	55.7	54.7
Widowed	61.9	60.8	52.6
Divorced	74.2	63.6	62.0
Separated	54.8	55.6	48.9
Never married	104.2	97.6	[4]

[1] Computed from 1960 U.S. Census 1/1000 sample

[2] Computed from 1970 U.S. Census 1/1000 sample

[3] Computed from Current Population Survey.

[4] Not computed at this time.

behavior earn the least. For the purposes of this paper, the theoretical underpining behind this relationship is not crucial though a rigorous development is contained in Polachek (1975a, 1975b). All that is important is that wages *at any point in time* are related to the amount and continuity of *past as well as expected* future labor market experience.

The relationship of wages and labor market experience is important. It implies that the earnings power of women is directly related to lifetime labor force experience. Women with the greatest experience levels earn the most. Also, young women with the greatest *expectations* of full-time work experience choose jobs with the greatest earnings potential.

Table 8
Earnings Equations for Married Males and Females

	coef	t-value	coef	t-value
Constant	−1988.15	−12.42	1577.67	10.28
Education				
Experience				
Experience²				
Hrs. worked/yr.	1.027	32.57	1.15	36.64
Region	637.70	14.17	751.30	15.90
Size	214.16	3.78	173.85	2.92
Nativity	22.24	0.27	76.92	0.89
Sex	−80.30	−1.07	−2533.35	−40.36
Yrs. married	25.73	11.90	28.89	12.71
NCH 6	87.58	3.47	−3.39	−.13
NCH < 6-11	70.34	2.89	242.50	9.56
NCH 12-17	31.59	1.14	206.49	7.15
NCH > 18	−26.47	−.42	−21.58	−.33
Exp. capital	0.076	54.30		
R^2	0.38		0.32	

Dependent Variable: Earnings—2nd value in column is t-statistic. Population: white married-once-spouse present males and females not employed by the government. No. Obs. = 28,065. See Table 1 for variable definitions.

Additional variables are as follows:

Yrs. married = number of years since marriage

NCH < 6 = number of children less than six years

NCH 6-11 = number of children between 6 and 11 years of age

NCH 12-17 = number of children between 12 and 17 years of age

NCH > 18 = the existence of children over 18 in the household

Adjustment made for occupation and industry.

Source: S. W. Polachek, "Differences in Expected Post-School Investment as A Determinant of Market Wage Differentials," *International Economic Review*, June 1975.

3. An Assessment of the Human Capital Hypothesis: Intermittency and the Wage Gap

Intermittency can be illustrated graphically. Although there exists variation in the frequency and periodicity of intermittency, a typical pattern is illustrated in the upper portion of figure 4. The point reflects the year in which one graduates from school. Upon graduation one enters the labor force and works for e_1 years, drops out of the labor force for H years, and returns to work for e_2 years.

The effect of intermittency on wages is illustrated in the lower portion of figure 4. O'H represents an age earnings profile for the typical individual exhibiting full lifetime labor force participation. It reflects earnings capacity at each level of experience and, thus, rises continuously with age.

Those labor market participants with intermittency have a different profile. First of all, initial labor market earnings (the vertical intercept) are smaller (point O). Second, the slope with respect to initial experience (e_1) is smaller (rising to level A instead of level G.) Third, earnings are essentially zero during the period (H) when one is out of the labor force. And fourth, and perhaps most interesting, the reentry wage (B), after a period of intermittency, is lower in real terms than the wages at the point just prior to leaving the labor market (A). The total loss [illegible] wages caused by intermittency can be expressed as segment (BK), the difference between reentry wages (B) and the wage one would have received had she been in the labor force fully. This gap can be divided into three segments: (1) BC represents the direct depreciation of skills due to atrophy, (2) CD reflects the lost wages due to lost seniority, and (3) DK reflects the extra wage one would have obtained with initially high expectations for labor force participation. This latter gap DK is composed of two parts, DG and GK. The gap DG reflects the additional earnings attributable to extra on-the-job training that would be obtained by those with expectations of complete labor force continuity. Similarly, the gap GK reflects the additional earnings attributable to extra schooling (including the study of more market-oriented fields) for those who plan to specialize more in a career than home activities.

Statistical analysis (multivariate regression) is typically used to assess the magnitudes of these effects. However, most current human capital analyses estimate (1) and (2) above but neglect to compute (3).[19]

The procedure can be illustrated using figure 4. The angles (α_1 and α_2) reflect the real growth in wages during the work segments e_1 and e_2. The angle δ reflects the depreciation in earnings power related to intermittency. Typically the α coefficients vary from about 1.2 to 4.0 percent, depending upon the population subgroup under study. The δ coefficient ranges from about -0.5 to -2.0 percent. These figures imply that earnings atrophy at between 0.5 and 2 percent per year when one drops out of the labor force, while they appreciate during work segments at between 1.2 and 4.0 percent. In general, the higher one's education and the more skilled one's job, the greater magnitude of these coefficients.

The typical woman (from the NLS data) drops out of the labor market about 10 years. Taking this figure for H as accurate, one can compute the distance BD, a lower bound estimate of the difference in earnings between the intermittent and the continuous worker. Taking typical α and δ estimates of .015 and -.005, respectively, one can compute the difference between B and D to be 20 percent. Even when omitting consideration recalling that the gender wage gap averages slightly over 40 percent, we find that this computation explains about 50 percent (the 20 percent explained wage gap divided by the 40 percent total wage gap) of the male-female wage differential.

One study that incorporates all three aspects of the wage gaps is Polachek (1975).[20] The results of this study are illustrated in table 8. Two columns are presented. The relevant of these coefficients are the values obtained for "SEX," a dummy gender variable. The coefficient (-2533.35) represents the dollar difference in earnings using the 1960 U.S. census 1 in 1,000 sample. The (-80.30) coefficient represents the male-female wage gap when appropriate account is

---

Typical studies that use cross-sectional regression techniques are Mincer-Polachek (1974), and Corcoran-Duncan (1979). Typical studies using panel data are Mincer-Polachek (1978), Mincer-Ofek (1982), and Corcoran-Duncan-Ponza (1983).

[19] Another possible exception is the study by S. Shapiro and S. Sandell, *Journal of Human Resources* (Summer 1980), that looks only at the difference in slope between line segments OA and OG.

Table 9
Earnings Equations Stratified by Sex

			Males			
Constant	3467.39	18.56	386.55	2.09	156.47	0.77
*Mar. Stat.	3001.82	14.71			534.65	2.64
Exp. Cap.			0.1102	32.51	0.1059	28.20
R'	0.0640		0.2503		0.2520	
No. Obs.	3167		3167		3167	
			Females			
Constant	1796.61	23.38	1956.56	16.18	3142.69	50.31
*Mar. Stat.	−624.73	−8.03			−148.26	−1.71
Exp. Cap.			0.0388	13.92	0.362	11.35
R'	0.0627		0.0762		0.0774	
No. Obs.	2350		2350		2350	

Key

Dependent Variable: Earnings (wage, salary, and self-employment income)
Mar. Stat.: dummy variable (1 = married, 0 = single)
Exp. Cap. = expected capital stock
Second value in each column is t-statistic.

Source: S. W. Polachek, "Differences in Expected Post-School Investment as a Determinant of Market Wage Differences," *International Economic Review*, June 1975.

taken of life-cycle differences in labor force expectations. As can be seen, 97 percent (2533.35-80.30)/2533.35 of the earnings differential can be explained when life-cycle expectations are fully incorporated.

To lend credence to these results, a similar computation is performed looking, not at gender differences, but at marital status differences within a given sex group. These results are contained in table 9. Here 82 percent of the $3,000 earnings premium married males receive can be explained by married-single differences in life-cycle labor force participation. Likewise, about 75 percent of the $625 premium single women obtain can be explained by lifetime labor force participation.

In short, even when using the most primitive models, the human capital approach that links lifetime labor force participation to earnings in the marketplace explains almost 50 percent of the gender difference in earnings. When using statistical specifications that more accurately reflect the impact of expected intermittency on initial schooling and job choices, close to 100 percent of the wage gap can be explained. Even the skeptic of the human capital framework must note that even the crudest of the human capital models explains more of the wage gap than the most sophisticated of the occupational segregation models. Also, as shall be illustrated, the power of the crowding/occupational segregation hypothesis is overstated because it turns out that human capital theory helps explain occupational segregation as well.

4. Human Capital Theory as a Determinant of Occupational Segregation

Not everyone believes that human capital theory can explain occupational differences. First, though, no rigorous empirical tests exist, Marxian-type economists such as Reich, Gordon, and Edwards, or Vietorisz and Harrison, believe that the dual labor market evolved through a historical process of "the transition from competitive to monopoly capitalism"[14] by means of a "positive feedback that

---

Though done independently, Polachek (1979) uses an approach similar to Sandell and Shapiro and obtains similar results.

[14] Reich et al.: 362.

connects technical change, labor productivity, and the money wage bargain in the labor market."[15] Second, crowding theories claim firms blatantly discriminate in the hiring and promotion process, though, here again, no empirical evidence supports such a contention. Finally, economists such as Sandell (1972), Landes (1977), and Polachek (1975) take a human capital viewpoint, namely, that "people with less expected time in the labor force will train less, and will enter those occupations in which less training is required."[16]

One study by Beller (1982) attempts to determine how much of existing occupational segregation is attributable to human capital differences and how much is attributable to discriminatory hiring practices. Beller employs regression analysis, specifying an index of job type as the dependent variable and human capital stock, some purported measures of discrimination, and additional controls as the independent variables. Simple comparison of the magnitudes of the discrimination and human capital coefficients are taken to yield a direct measure of how much each factor contributes to the likelihood that any individual is employed in a "male" occupation.

The problem, however, is that Beller's indicator of discrimination, namely, industrywide equal employment opportunity (EEO) enforcement, is inappropriate. Beller defends her use of this indicator on the grounds that "the success for EEO laws in increasing women's entry into male occupations would be convincing evidence that discrimination had originally been a cause of occupational segregation" (page 390). However, the mere fact that the government forces certain firms—particularly firms with large Federal contracts—to change their employment practices does not necessarily mean that discrimination existed in the first place. In fact, Beller's hypothesis and her empirical findings are just as consistent with *reverse* discrimination against males brought about by EEO enforcement as they are with possible direct discrimination against females before the advent of EEO.

Recall that earnings power depreciates with time out of the labor force. The human capital approach states that it is economically rational for those who plan much time out of the labor force to choose occupations with low penalties for intermittent employment. Thus, even in the absence of employer discrimination, efficient employee behavior would lead to occupational segregation on the basis of labor force intermittency. Those with the most intermittent participation would be in the jobs with the smallest penalties for intermittency and the greatest amounts of on-the-job work flexibility. It follows that if women as a whole have more intermittent participation than men, then aggregate differences in occupational structure should exist.

These are exactly the patterns that emerge. Table 10 illustrates occupational patterns for employed females. For each country, with the exception of Israel and Sweden (countries with high female labor force participation rates), a greater proportion of never-married women are in the professional, technical, and administrative-type jobs. This contrasts with the large proponderance of married women in the more menial service and agricultural jobs. (The high proportion of never-married women in clerical and sales-type jobs is probably due to the fact that age adjustments were not made.)

Even Beller's study is consistent (table 11). Here, as was previously indicated, a regression is run assessing the impact of marital status and home time variables on the probability of being employed in a male occupation. The results adhere to the human capital hypothesis. In Beller's own words:

> As predicted [by the human capital hypothesis], women who work part-time are between 3.8 and 4.4 percent less likely to be employed in male occupations then women who work full-time. Women who stated that their main reason for part-year work was "home" taken to represent a greater commitment to work in the home than to work in the market, are 2.8 percent less likely than other women

---

[15] Vietorisz and Harrison: 374.

[16] Sandell: 175.

Table 10
Employed Female Occupational Distribution by Marital Status

	Percent profession, technical administrative	Percent production related	Percent clerical and sales	Percent service and agriculture	Total
Austria					
Ever married	7.0	18.2	33.7	41.1	100.0
Never married	10.8	20.5	40.9	27.8	100.0
Denmark					
Ever married	15.5	9.2	37.9	37.3	99.9
Never married	27.9	11.6	25.6	34.9	100.0
Finland					
Ever married	13.8	13.0	27.9	45.3	100.0
Never married	17.1	10.0	32.8	40.0	99.9
Germany					
Ever married	14.2	14.8	55.3	15.7	100.0
Never married	15.4	15.4	63.1	6.1	100.0
Great Britain					
Ever married	13.3	19.0	40.4	27.2	99.9
Never married	25.9	16.5	46.7	10.8	99.9
Israel					
Ever married	33.0	10.6	35.4	21.0	100.0
Never married	23.5	20.3	41.3	15.0	100.1
Japan					
Ever married	7.6	17.1	18.6	56.7	100.0
Never married	11.0	17.5	58.2	13.3	100.0
Netherlands					
Ever married	22.0	4.6	51.4	22.0	100.0
Never married	28.1	8.3	44.8	18.8	100.0
Northern Ireland					
Ever married	18.1	26.2	21.5	34.2	100.0
Never married	18.8	22.4	40.0	18.8	100.0
Norway					
Ever married	20.1	8.6	36.0	35.2	99.9
Never married	28.2	0.0	37.5	34.4	100.1
Sweden					
Ever married	25.2	8.4	41.6	24.8	100.0
Never married	13.9	5.6	55.6	25.0	100.1
United States					
Ever married	24.7	16.1	39.6	19.6	100.0
Never married	28.5	9.2	42.4	19.8	99.9

Source: Patricia A. Roos, "Marital Differences in Occupational Distribution and Attainment," Paper presented at the Annual Meetings of the Population Association of America, Washington, D.C. (March 1981).

Table 11
Marginal Probabilities of Being in a Male Dominated Occupation

	Female		Male	
	coef	t-value	coef	t-value
EDUC	−.017	7.7	−.004	2.3
YRS < 8	−.007	1.4	−.016	4.1
YRS > 12	.024	7.6	−.015	5.3
YRS > 16	.022	3.6	0.002	0.5
EXPER	.005	7.1	0.003	4.4
$EXPER^2$	−.0001	7.3	−.0004	3.2
PARTTIME	−.058	11.0	−.122	16.8
SINGLE	.007	1.0	−.073	11.5
OTHERMAR	.021	3.3	−.031	4.0
NCHILD	.001	0.1	—	—
HOME	−.018	2.4	—	—
N	29,546		36,652	
sample mean	0.177		0.805	
R^2	0.029		0.065	

Source: Table 4 of A. Beller, "The Impact of Education on Entry Into Nontraditional Occupations," manuscript (March 1981) generated from 1977 CPS data. Adjustments also included in regression for weeks worked, veteran status, health, race, Federal share, region, area unemployment rate, and SMSA size.

Table 12
Intermittency and Occupational Distribution

	NLS Data, 1966						PSID Data, 1976		
	Home-time[1]	Actual Female Occup. Dist.[2]	Projected Occup. Dist.[3]	Male Occup. Dist.[4]	Cross-Section Atrophy Est.[5]	Panel Atrophy Est.[6]	Home-time[1]	Actual Female Distribution[2]	Projected Distribution[3]
Professional		14%	19%	17	−.136	−45.21		18.5%	23.6%
Managerial	−1.217	3	7	17	−.531	−30.30	−.035	4.6	8.8
Clerical	0.657	46	9	7	−.362	−21.64	.043	41.3	34.2
Sales	2.375	7	3	6	−.281	−12.61			
Craft	1.095	0.9	0.8	26	−.444	−44.68	−.010	16.4	26.0
Operative	1.299	15	13	22	−.115	−8.17			
Household Serv.	2.461	1	0.5	0	+.387	−5.91	.099	19.3	7.4
Other Service	1.558	13	9	5	−.233	−14.89			

---

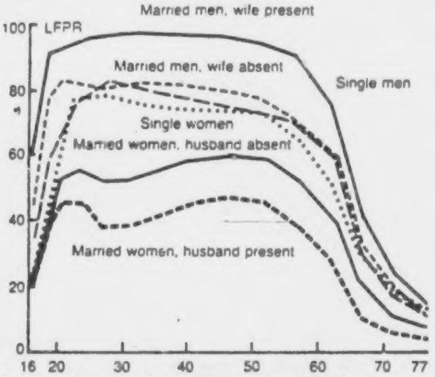
[1] The effect of hometime (time out of the labor force) on the logarithm of the odds ratio of being in the indicated occupation relative to being a professional.

$$\left(\delta \ln \frac{P(OC_i)}{P(OC_{prof.})} \middle| \delta \text{ hometime}\right)$$

[2] Percent females in each occupational category.
[3] Projected female occupational distribution were females to have zero hometime.
[4] Percent sales in each occupational category based on 1966 Survey of Economic Opportunity data for men 30-44 years of age.
[5] Atrophy rates computed using 1966 longitudinal data.
[6] Atrophy rates using panel aspects of the 1974 NLS data.

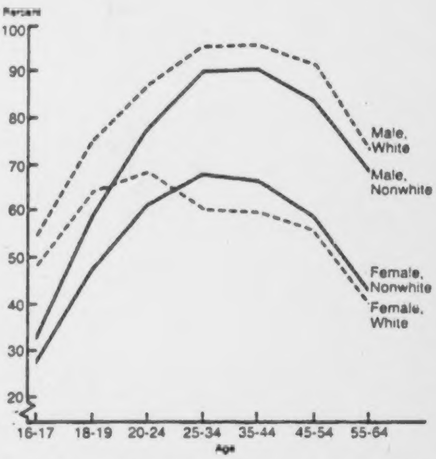
Source: S. Polachek, "Secular Changes in Female Job Aspirations," in R.L. Clark, ed., *Retirement in An Aging Society* (Duke University Press: 1980; and S. Polachek, "Occupational Self-Selection: A Human Capital Approach to Sex Differences in Occupational Structure," *Review of Economics and Statistics*, February 1981.

FIGURE 1
Labor Force Participation—Presence or Absence of Spouse by Age and Sex, 1970



Source: U.S. Bureau of the Census, *Census of Population: 1970 Detailed Characteristics, Final Report*, PC(1)-D(1), *U.S. Summary* (Washington, D.C.: Government Printing Office, 1973), table 216, p. 688. As reported by Robert Fearn, *Labor Economics: The Emerging Synthesis* (Cambridge, Mass.: Winthrop Publishers, 1981), p. 72.

FIGURE 2
Age Participation Profiles by Race and Sex, 1978



Source: *Employment and Earnings*, January 1979, pp. 156-57, table 3. As reported by C. Lloyd and B. Niemi, *The Economics of Sex Differentials* (New York: Columbia University Press, 1979), p. 38.

to be employed in non-traditional jobs [p. 383]. Over the range of the curve where most women work, the sign [of the weeks coefficient] is consistent with prediction [p. 383]. As predicted, marital status works in the opposite direction for men than for women. Single women, but married men, have the greatest commitment to the labor force and are most likely to be employed in male dominated occupations [p. 385].

My own analysis of the Ohio State National Survey and the University of Michigan Income Dynamics Survey yields similar results. Columns 1 and 7 of table 12 are logit coefficients reflecting the impact of time out of the labor force (home time) on the logarithm of the odds ratio of being in any occupation relative to being a professional. Note that home time dramatically increases the probability of being in household service occupations while it dramatically decreases the probability of being in managerial and professional occupations. One can apply these logit results to see how the female occupational distribution would change, were women to have a full-time commitment to the labor market. These results are illustrated in comparing columns 2 and 3, as well as columns 7 and 8. It can be seen that with both data sets, full-time, full-life labor force participation dramatically increases the proportion of women in managerial and professional occupations, while dramatically decreasing the proportion of women in household and service jobs.

The scenario about certain jobs being more amenable to labor force intermittency is also upheld.[17] Columns 5 and 6 (table 12) show how atrophy rates (computed in two different ways) vary by occupation. Although crude, they indicate higher earnings losses associated with intermittency in the professional and managerial occupations compared to the household and service occupations.

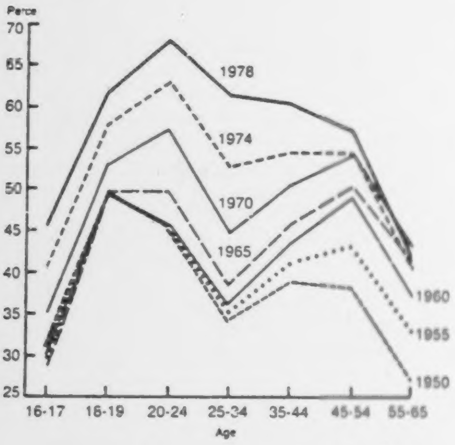
The research on occupational choice is only at its initial stages. The models merely assess the direct relation between intermittency and occupational choice, yet still neglect other aspects of the interrelationship between job choice and familial responsibility. Nevertheless, though far from the end of the story, the current tables, when taken together, provide evidence that lifetime labor force participa-

---

[17] For additional evidence on this hypothesis, see Wolf and Rosenfeld (1978), Cox (1982), Daymont and Andirsani (1982), Zalokar (1982), and Blakemore and Low (1984).

FIGURE 3

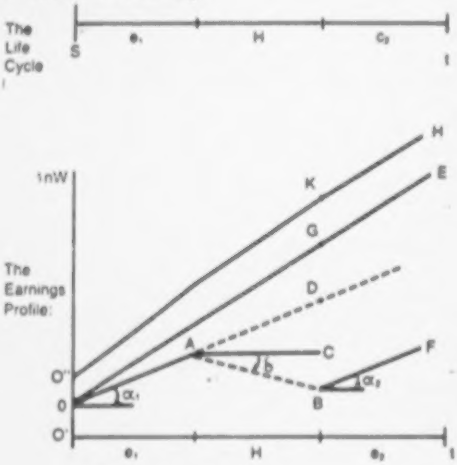
Female Age Participation Profiles, 1950-78.



Source: 1950-74: U.S. Dept. of Labor, *Employment and Training Report of the Pres* (1978), pp. 181-82, table A-2. 1978: *Employment and Earnings*, January 197, 59, table 4. As reported by C. Lloyd and B. Niemi, *The Economics of Sex Differentials* (New York: Columbia University Press, 1979), p. 39.

FIGURE 4

Labor Force Intermittency and its Effect on Earnings



Typical Coefficient Estimates:
α_1 and α_2 = .012 to .040
δ = − .02 to − .005

tion, as predicted by human capital theory, aids in determining occupational patterns.[18]

Current Government Policy

The wage gap has been an issue for the Federal Government at least since the early 1970s. Governmental policy promoting sexual equality in the marketplace has been oriented almost solely towards business. Firms are sued because they allegedly pay unequal wages for equal work. Armed with Title VII of the Civil Rights Act of 1964, Executive Order 11246, and other legislation, the government, as well as individuals, has brought class action suits at unprecedented levels.

Despite such legal activity, most studies[19] have shown that such legislation has had, at best, only small effects. Wage differentials have not narrowed, and occupational distributions remain different. This lack of progress has most likely resulted because governmental legislation treats corporations as the sole culprit of all sex differences within the labor market.

---

[18] England (1982) questions the validity of the human capital approach. However, rather than basing her criticism on an appropriate test, she modifies the human capital earnings equation (discussed in the section on the human capital approach) by reintroducing the PF variable (representing the percentage female in a given occupation) as a proxy for labor force intermittency. ducing a proxy necessarily implies a classic econometric problem of errors in measurement. When her results are recast in the context of sound econometric theory, even they are consistent with human capital theory. See, S. Polachek, "Occupational Segregation: A Defense of Human Capital Predictions" (mimeo), August 1982.

[19] See A. Beller, "EEO Laws and the Earnings of Women," *Industrial Relations Research Association, Proceedings of the 29th Annual Winter Meeting* (1976), 190-98; A. Beller, "The Impact of Equal Opportunity Policy on Sex Differentials in Earnings and Occupations," *American Economic Review (Proceedings)* (May 1982), 171-75; R. Butler and J. Heckman, "The Impact of the Government on the Labor Market Status of Black Americans: A Critical Review," in *Equal Rights and Industrial Relations* (Madison: Industrial Relations Research Association, 1977), chap. 9; H. Goldstein and R. Smith, "The Estimated Impact of the Antidiscrimination Program Aimed at Federal Contracts," *Industrial and Labor Relations Review* (1976), 523–43; and J. Smith and F. Welch, "Black-White Male Wage Ratios: 1960-1970," *American Economic Review* (1977), 323–38.

As has been implied, such an approach is seriously limited in perspective, if only because it neglects societal factors, such as the sex differences in lifetime labor force behavior coming about through the division of labor in the household. Whereas it may be true that some of the sex differences in labor force participation are caused by women being discouraged from working continuously, it is well documented that much of the differences are not caused by firms, but rather the more implicit and subtle forms of societal discrimination taking place directly within the family. The fact that women are on the average younger and less educated than their husbands is sufficient reason to cause specialization within the household, leading to the concentration of men in market work and the concentration of women in nonmarket and family activities.[illegible] It is for this reason that we observe single-never-been-married women to have greater lifetime labor force commitment than their married counterparts, as well as a higher level of earnings and a better job. It is also for this reason that we observe the wage gap between single men and single women to be small relative to that between married men and married women, to be smaller at younger ages, and larger for those with children.

A Prognosis

Despite the apparent failure of governmental EEO-type policies, greater sexual equality is coming about. It is not noticeable among all women, but is widely observed among the younger cohorts. Young women are entering the labor market in unprecedented proportions. They are doing so with expectations of greater labor continuity brought about by postponing marriage, bearing fewer children, and having almost epidemic divorce rates. These expectations are causing the younger cohorts to invest in human capital skills at unprecedented proportions. School attendance by women is becoming larger than that of men, and women are now entering what used to be occupations of the male domain. Law school, business school, and medical school enrollment, which only a decade ago were at meager levels for women, are now approaching 40 percent. For these groups there is rough parity with men.

Although the older cohorts are also increasing their role in the economy, they are at a great disadvantage. They are reentering the labor market after spending an average of about 9 years out for childrearing responsibilities. Because of this time out, many of their skills atrophied, resulting in an earnings power lower than it otherwise would have been. It is the inclusion of these reentrants that tends to bias downward the aggregate governmental statistics measuring equality between the sexes.

Take an example. The mean male and female wages for the entire economy include those wages of the reentrants. Reentrants to the labor market do so at lower than average wages. Including those with lower than average wages brings down the mean wage, despite the fact that these women may, in the future, have parity earnings with men. For this reason, the use of aggregate data can be very misleading because it fails to take into account the long-term trends that will come about.

Appropriate Governmental Policy to Combat Sex Discrimination

There are two issues governing legal aspects of antidiscrimination policy. One has to do with opportunity and the other with outcome. Equal opportunity implies that such characteristics as race, sex, and religion cannot be used as a determining factor prohibiting a person from any job. Also these factors cannot be used to govern the pay a person receives.

Equal opportunity is guaranteed in the U.S. Constitution and its amendments. There is no doubt that everyone has a moral obligation to provide equal opportunity. However, it is not morality alone that has motivated these laws. Not providing equal opportunity is economically inefficient. It is inefficient because it results in lower output levels. Put differently, discrimination is not free. It is costly to the U.S. economy. Discrimination implies that qualified individuals are not permitted to obtain the jobs they deserve. It also implies that the less qualified will be hired, and it is for this reason that output is diminished.

For an economy devoted to free enterprise, the question of unequal opportunity cannot exist. Long-run competitive forces will drive out of business any firm that engages in discrimination. If only high profit firms can exist in the long run, then those

---

[illegible] For a recent depiction of this phenomenon for France see the review in *Time Magazine* (May 31, 1982) of the study by Franch sociologist Francois de Singly, p. 75. For a theoretical description with U.S. evidence, see S. Polachek, "Potential Biases in Measuring Male-Female Discrimination," *JHR* (1975).

firms that discriminate will be at a competitive disadvantage. Their lives will be short. Thus, competition is the greatest tool for fighting unequal opportunity.

Not all economic sectors are competitive. Governments, public institutions, regulated monopolies, and other such institutions do not compete in the marketplace. As such, they need not minimize costs and need not maximize profits. These entities are capable of discriminating. In fact, past studies have illustrated this point for regulated monopolies.[21] Since noncompetitive forces are the prime cause of unequal opportunity, the promotion of economic competition is the greatest weapon in preventing discrimination.

As was illustrated, Federal policy has not concentrated on opportunity, but on outcome measures. Outcome measures are defined as the levels of economic success we observe for the various demographic groups. It has been alleged that unequal economic position among women is prima facie evidence for discrimination to have resulted. Obviously, based on the model of wage determination presented, this is not the case. Unequal economic outcomes in society need not result from unequal economic opportunity. We have illustrated that division of labor within the home is at least equally responsible. Thus, even with equal opportunity, sex differences in incentives can result in unequal outcomes.

Government policy concentrates on bringing the firms to trial if wages, job levels, and promotions are lower for any minority groups. Such action focuses only on outcome and not on opportunity. Such action is often misdirected and costly because it does not get at the true causes of unequal sexual well-being. As indicated, sexual inequality is caused not by unequal opportunity, but by unequal incentives embedded in the family structure. It is the wife who is shackled with the family responsibility, and it is the wife who forgoes wages and job opportunities to take on these responsibilities.

Whereas it is not up to the state to legislate how many children families should have, or whether the husband or wife must take responsibility in raising children, it is the state that helps set the costs. High marginal tax rates on wives' earnings decrease their labor market incentives. Unavailability of low-cost day care does the same.

Equality of outcome is hard to achieve. But even when achieved, it is difficult to measure because everyone is not at the same point in their life-cycle investment process, even for those of the same chronological age. Only with vast changes in the family, and the resulting division of labor patterns, would we observe equal sexual outcomes in the labor market. To the extent that division of labor remains, true economic parity in wages or occupational structure will not be achieved. However, with current demographic trends, a more rapid convergence is coming about. As the newer cohorts age, these trends should be more easily discernible within the data.

References

Alchian, A., and Kessel, R. 1962. "Competition, Monopoly, and the Pursuit of Money." In H.G. Lewis et al., *Aspects of Labor Economics*. Princeton: University Press.

Beller, A. 1982. "Occupational Segregation by Sex: Determinants of Changes." *Journal of Human Resources*, Summer, 371–92.

Beller, A. 1976. "EEO Laws and the Earnings of Women." *Industrial Relations Research Association, Proceedings of the 29th Annual Winter Meeting*, 190–98.

Beller, A. 1982. "The Impact of Equal Opportunity Policy on Sex Differentials in Earnings and Occupations." *American Economic Review Proceedings*, May, 171–75.

Blakemore, A., and Low, S. 1984. "Sex Differences in Occupational Selection: The Case of College Majors." *Review of Economics and Statistics*.

Butler, R., and Heckman, J. 1977. "The Impact of the Government on the Labor Market Status of Black Americans: A Critical Review." In *Equal Rights and Industrial Relations*. Madison: Industrial Relations Research Association, chap. 9.

Chiswick, B. 1983. "The Earnings and Human Capital of American Jews." *Journal of Human Resources*, Summer 1983, 313–36.

Chiswick, B. 1983. "Analysis of the Earnings and Employment of Asian American Men." *Journal of Labor Economics*, April.

Chiswick, B.; Fackler, J.; O'Neill, J.; and Polachek, S. 1975. "The Effect of Occupation on Race and Sex on Hourly Earnings." *Review of Public Data Use*, April, 2–9.

---

[21] See A. Alchian and R. Kessel, "Competition, Monopoly, and the Pursuit of Money," in H.G. Lewis et al., *Aspects of Labor Economics* (Princeton: Princeton University Press, 1962).

Corcoran, M., and Duncan, G. 1979. "Work History, Labor Force Attachment, and Earnings Between the Races and Sexes." *Journal of Human Resources*, Winter, 3–20.

Corcoran, M.; Duncan, G.; and Ponza, M. 1983. "A Longitudinal Analysis of White Women's Wages." *Journal of Human Resources*, Fall, 497–520.

Cox, D. 1982. "How Durable is a Woman's Human Capital: An Interoccupational Study." Mimeo.

Daymont, T., and Andrisani, P. 1982. "Why Women Earn Less Than Men: The Case of Recent College Graduates." Paper presented at the Idustrial Relations Research Association Meeting. New York, December 1982.

Edgeworth, F.Y. 1922. "Equal Pay to Men and Women." *Economic Journal*.

England, P. 1982. "The Failure of Human Capital Theory to Explain Occupational Sex Segregation." *Journal of Human Resources*, Summer, 358–70.

Fuchs, V. 1971. "Differences in Hourly Earnings Between Men and Women." *Monthly Labor Review*, May, 9–15.

Goldstein, H., and Smith R. 1976. "The Estimated Impact of the Antidiscrimination Program Aimed at Federal Contracts." *Industrial and Labor Relations Review*, 523–43.

Jones, E., and Long, J. 1979. "Part-Week Work and Human Capital Investment by Married Women." *Journal of Human Resources*, Fall.

Landes, E. 1977. "Sex Differences in Wages and Employment: A Test of the Specific Capital Hypothesis." *Economic Inquiries*, 523–38.

Lloyd, C., and Niemi, B. 1979. *The Economics of Sex Differentials*. New York: Columbia Press.

Mincer, J., and Ofek, H. 1982. "Interrupted Work Careers: Depreciation and Restoration of Human Capital." *Journal of Human Resources*.

Mincer, J., and Polachek, S. 1974. "Family Investments in Human Capital: Earnings and Women." March/April, Part II 1974, S76–S108.

Mincer, J. 1978. "Women's Earnings Reexamined." *Journal of Human Resources*, Winter, 118–34.

O'Neill, J. 1983. "The Determinants of Wage Effects of Occupational Segregation." Mimeo. March.

O'Neill J. 1984. "The Comparable Worth Trap." *Wall Street Journal*, Jan. 20.

Polachek, S. 1979. "Simultaneous Equations Models of Sex Discrimination." In *Income Inequality: Trends and International Comparison*, J. Moroney, ed. Lexington: D.C. Heath.

Polachek, S. 1975. "Difference in Expected Post-School Investment as a Determinant of Market Wage Differentials." *International Economic Review*.

Polachek, S. 1975. "Potential Biases in Measuring Male-Female Discrimination." *Journal of Human Resources*, Spring.

Polachek, S. Forthcoming. "Occupational Segregation: A Defense of Human Capital Predictions." *Journal of Human Resources*.

Rathbone, E.J. 1917. "The Remuneration of Women's Services." *Economic Journal*, 55–68.

Reich, M.; Gordon; and Edwards, R. 1973. "A Theory of Labor Market Segmentation." *American Economic Review, Proceedings*, May, 359–65.

Sandell, S. 1972. "Discussion." *American Economic Review*, May, 175–76.

Sandell, S., and Shapiro, D. 1980. "Work Expectations, Human Capital Accumulation, and the Wages of Young Women." *Journal of Human Resources*, Summer, 335–53.

Smith, J., and Welch, F., 1977. "Black-White Male Wage Ratios: 1960–1970." *American Economic Review*, 323–38. [illegible]

Treiman, D., and Hartmann, H. 1981. *Women, Work, and Wages: Equal Pay for Jobs of Equal Value*. Washington, D.C.: National Academy Press.

Vietorisz, T., and Harrison, B. 1973. "Labor Market Segmentation: Postive Feedback and Divergent Development." *American Economic Review, Proceedings*, May, 366–76.

Zalokar, N. 1982. "Male-Female Differences in Occupational Choice and the Demand for General and Occupational Specific Human Capital." Mimeo.

Senator EVANS. There are no other witnesses this morning. The hearing is adjourned.

[Whereupon, at 12:45 p.m., the subcommittee was recessed, to reconvene subject to the call of the Chair.]

"OPTIONS FOR CONDUCTING A PAY EQUITY STUDY OF FEDERAL PAY AND CLASSIFICATION SYSTEMS"—REPORT OF THE GENERAL ACCOUNTING OFFICE

WEDNESDAY, JULY 24, 1985

U.S. SENATE,
SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE AND GENERAL SERVICES,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The subcommittee met at 10:16 a.m. in room SD-342, Dirksen Senate Office Building, Hon. Ted Stevens (chairman of the subcommittee) presiding.

Present: Senators Stevens and Gore.

Also present: Senator Evans.

Staff present: Wayne A. Schley, staff director; Jeffrey D. Landry, assistant counsel; Pat Phillips, chief clerk; Thurgood Marshall, Jr., minority staff director and counsel.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. I am sorry to be delayed. I was in a discussion concerning the per diem rates for Federal employees, which is also within the jurisdiction of this subcommittee.

Today and tomorrow, the subcommittee will continue hearings on a General Accounting Office report entitled "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems." The first 2 days of these hearings were held on May 22 and 23.

Once again, we look forward to hearing from the witnesses regarding the report. In order to achieve a balanced hearing, we have allotted approximately 1 hour each day to the proponents of pay equity and 1 hour of each day to the opponents. We will take alternate testimony for approximately 30 minutes on each side.

I think we are going to have to look at this and try to get an understanding, because we would like to reserve a few minutes of each half hour for members who may come in and want to ask questions.

Although we may not take it, I am going to say that 20 minutes of each half hour will be for the witnesses, and 5 minutes on each side of the aisle here for questions from the members who may come. If members have no questions, the witnesses, of course, will be free to use the time in any way that they wish.

Is that satisfactory with you, Senator?

Senator **Evans**. Of course.

Senator **Stevens**. I hope it is satisfactory to everyone concerned.

The first witness will be Hon. Robert M. Isaac, who is the mayor of Colorado Springs, who I understand is appearing as a witness in favor of the approach.

Good morning, sir.

Mr. **Isaac**. Good morning, sir.

Senator **Stevens**. Colorado Springs is a lovely town. We all enjoy the opportunity to come out there once in a while. Since we are starting a little late, we will try to adjust as we go on. I apologize for being late, Mr. Isaac. Please proceed.

TESTIMONY OF HON. ROBERT M. ISAAC, MAYOR, COLORADO SPRINGS, CO

Mr. **Isaac**. Thank you, Senator Stevens, Senator Evans. I appreciate the opportunity and the invitation to speak to you. As I indicated, I am Bob Isaac, mayor of Colorado Springs.

In October 1980, a group of 36 female employees appeared before the city council to protest the proposed salaries for clerks and secretaries for that forthcoming year. They had compared their salaries for their classifications for those in traditionally male classifications, which were surveyed on a local market and an external market. The clerical and secretarial had been surveyed only on a local market.

They requested, in effect, to have their salaries also surveyed on external markets.

In response to that request, the director of personnel indicated that any difference would not relate to the markets being surveyed and that the Denver market did not affect our clerical and secretarial market with respect to attracting and retaining quality personnel.

He believed that the issue was squarely one of comparable worth and made certain suggestions to the city council to form a clerical and secretarial employee group.

I would point out that the city of Colorado Springs has not recognized unions or third party representatives as far as salary, benefits, and other matters involving employees.

However, any group and any individual may appeal and move through the administration to city council on the questions of pay, benefits and other matters relating thereto.

But he suggested they form a clerical and secretarial committee. We had many other committees in effect at the time; one to invite a speaker of national credibility to discuss this particular issue, and a committee to hold one or more council work sessions in that regard.

Eleanor Holmes Norton was invited to Colorado Springs in May 1981 and addressed not only the council but the employees, the special interest groups, and the general public who may have been interested.

We had a work session at the city council in 1981 in June, and at that time agreed unanimously to direct our attention to solve the inequity issue.

We used the Hay guide chart profile method. The Hay evaluation was done and implemented in 1978, so it did not arise out of this particular controversy. We already had the classifications of employees.

As everyone knows, our pay and benefits are public. Many of those that are criticized are not public, so we didn't know what relationships there were, and we have a policy of having special equity and external competitiveness. In order to establish external equity, we did set up the classification system. There has been a great deal said about the value of classifying.

We feel that using the Hay system with a good mix of subjective and objective criteria has created a good system. Any efforts in the evaluation certainly are covered by the difference of $200 to $400 between classifications when we showed that discrimination existed.

After we classify, we go to the market and we go to different markets. We have four salary lines, one for police and fire, which is one separate market, and one for utilities. We own all of our own utilities, including electric production, transmission, distribution, and natural gas distribution. We have one for maintenance and operation and one for clerical and secretarial. There would be a separation between those lines which we could go to the market and survey after the classifications are made. That is expected because of the different scales and grades of professions that are being surveyed now.

It is not unusual to have that difference. However, in the case of the traditionally female job classification, we found no justification for the $200- to $400-per-month separation between comparable jobs on the clerical and secretarial salary line and on the maintenance and operational salary line.

Females had worked for less in those jobs, and our analysis supported that statement. So we had to adopt a valid reason for the disparity in order to have something to remedy, I suppose.

We concluded that they worked for less because they had been offered less, and not as a function of the free market. It was more a function of sex discrimination. The market survey revealed that discrimination because all of the traditionally female classifications in our work force were similarly affected.

I have given you an example of that on the classifications that are attached to my written statement.

It was determined that the salary survey data received from any traditionally female labor market was tainted by sex discrimination practiced by the employment and compensation of females. We decided to correct that on the basis of clearing up 80 percent between the difference of the maintenance and operation line, which was basically surveyed on a local market, and the clerical and secretarial over a 4-year period.

It was our position, and I have to admit, it is rather arbitrary, that 20 percent of that difference was not based on illegal or sex discrimination because it was related to spouse following, which was characterized by the female changing her job not at the optimum time for her particular job, but at the optimum time for her spouse, which had a negative effect on her salary and her market.

So we phased it in over 4 years, eliminating 80 percent of the difference, and the salaries implemented in January 1985 completed that 4-year period.

We are continuing to study this question of spouse following to see how valid it is and whether or not we have the right percentage, if any.

We believe a significant barrier to comparable worth is that of multiple job evaluation systems. We don't have one, and therefore, we don't have the difficulty that those who have multiple systems of providing valid comparisons across the work force do.

In addition, we believe that the law of supply and demand will not solve the problem now or in the future. As a result of our data, we believe the traditional female market will continue to be tainted with that discrimination.

It is our philosophical position that the law of supply and demand must be taken into account when establishing salaries, but only when the market separations are natural or related, in this case, to what we consider to be discrimination.

In summary, I emphasize we have chosen to provide a correction for the employees in traditionally female jobs to compensate for the discrimination that we have found in our survey in various areas of survey work, and the action is in keeping with the goal of maintaining internal equity and external competitiveness for our work force of over 3,000.

This decision is in keeping with our definition of comparable worth, which is equal way for work of comparable value to our organization, and I emphasize that, because there have been characterizations of our plan as one contemplating librarians and mechanics nationwide or oil riggers and nurses nationwide, and that misses the point completely. We have never sought, nor do we, Federal or State legislation on comparable worth. In fact, we would fear additional mandates and regulations, witness the recent *Garcia* case in the Fair Labor Standards Act, and we don't wish to force this particular plan on anybody else.

We just say that we believe that we have handled the matter at the local level without communications, without strife, and with a relatively small cost.

So as I pointed out in my testimony, we are proud of our efforts in comparable worth and our employees are happy with it. They are extremely productive, have very high morale, and we have few employees per house compared to any other communities. I thank you for the opportunity. I would welcome any questions, sir.

Senator STEVENS. Mr. Isaac, you have done a great job, and it is known nationally. I think the people of your area can be justly proud of the way you have approached this problem. I do know a little bit about your area, but not as much as you, obviously. You have a particular job market which is highly militarily related, don't you?

Mr. ISAAC. We have a very large military population and several facilities.

Senator STEVENS. Aren't the spouses that are working for you wives of military personnel?

Mr. ISAAC. There are some. I haven't checked the demographics. I would say that we have, as many communities to, a very high percentage of single women heads of households. I think that is another reason to look into the pay equity issue. I would say it is on the nature of 27, 28 percent.

Senator **Stevens**. Is that high compared to other communities?

Mr. **Isaac**. I feel that it is high and significant, but I haven't compared that with other communities.

Senator **Stevens**. That would be high for our community, in my judgment.

Do you really feel that the clerical/secretarial classification in your city had been paid discriminatorily?

Mr. **Isaac**. We surveyed among the local market, and with the same classifications, which were already completed, the same high evaluation points, there was such a great disparity between that and the male dominated maintenance and operation—I am not talking about police and fire and utilities, but the mechanics, the park workers and so forth—that there was no other explanation than that the market we surveyed had built-in discrimination in it.

Senator **Stevens**. Have you gotten any turnover statistics, yet?

Mr. **Isaac**. We are doing some work on that. Getting information from other organizations concerning the reason for turnover is somewhat difficult. We do have surveys done when people leave. We find out the reasons. We are gathering that data.

Obviously, that is one of the things that the clericals and secretarials are going to point to in order to clear up that additional 20 percent. If they can establish that they have no more turnover and we get sufficient data on that, I imagine that will be a fairly persuasive argument in the face of the spouse following argument.

Senator **Stevens**. Again, I congratulate you.

Senator Evans, do you have any questions?

Senator **Evans**. Thank you, Mr. Chairman.

I join the chairman in saying that I think this is precisely how a pay system of this kind, especially in the public arena, ought to be carried forward and carried forward without mandate, without requirement from external forces, without a law from above that requires it to be done, but because it appears to be in the best interest of the employer and of the enterprise.

I have just a couple of questions. Do I understand correctly that as you began the first studies, the Hay system was familiar to the city and had been utilized for internal salary alignments prior to this particular operation?

Mr. **Isaac**. That is right.

Senator **Evans**. You had the Hay system in place a couple of years before hand.

Before you got into this study and implementation of the changes which resulted from it, was there general employee understanding and satisfaction of the Hay system itself in the way in which salaries are set?

Mr. **Isaac**. Yes, that took some time. That took some time, obviously, because it was a new system. I think we started in 1975 or 1976, 1976, I believe, and phased it in over a couple of years.

Senator **Evans**. But by 1980, it was fairly well understood and accepted by the members?

Mr. **Isaac**. Yes. That is correct.

Senator EVANS. Then I understand that as you went through this system, you actually came out with four different or separate salary lines for the four categories of employees you mentioned. Do I understand correctly that when you measured those lines and the point system results with the market, that they tended to match pretty well for the other three; however you did find some real disparities?

Mr. ISAAC. They were all separate. For example, police and fire retention would be affected by Denver and Ft. Collins and other areas. So we would survey some comparabie police departments.

Senator EVANS. Sure.

Mr. ISAAC. In the case of utilities, we would survey, obviously, public service companies and several others. So those lines would understandably be different.

Senator EVANS. Yes.

Mr. ISAAC. And we would expect different lines. The ones we couldn't understand was the difference between the maintenance and operation line, which was basically surveyed on the local line, and the clerical and secretarial on the local line. There was no particular reason for there to be this difference, as you can see, on the 10 classifications that I have given you here.

Senator EVANS. When you matched the results as they came out of a comprehensive study under the Hay program and matched those with the current salaries on the maintenace and operation personnel and then did the same for those generally female classifications, is that where the disparity showed up?

Mr. ISAAC. For example, the senior accounting clerk at 220 and the carpenter foreman, which was also 220, were put in without any regard to going to the market. That was just classifying the jobs, the criteria.

Going to the market, then, in 1982 showed that 123.4 percent M/O to C/S. It was over 23 percent difference. That is a considerable amount. It is from $1,441 to $1,782 a month. Even if we made some possible mistakes, you wouldn't expect the error to be that great in classification comparison.

Senator EVANS. In operating that kind of a system, there are some who suggest that the Hay systems are purely subjective; there is no objectivity to them at all; it is just in interference with the marketplace. Of course, some hold onto the marketplace with tentacles that are unusual.

What is your measurement?

Mr. ISAAC. It depends on how you use it. If you have an appropriate evaluation from both the employee and the supervisor and analyze the job as objectively as you can, I think it is a good system.

The problem is that you have to have it, because when you have a large number of employees and all of your pay and benefits are public so that they all know, it is not like the private sector. Try to get all of the job matches and all the confidentiality you have to go through. I think they would be doing the same thing, the private sector would, if they had to make them all public.

Senator EVANS. Yes.

Mr. ISAAC. That is the basic difference. How can you possibly have a satisfied work force when there are great disparities between jobs? We had 735 classifications counting all of our own utilities and the different functions, some of which you don't find in the private sector.

Sixty-five of these classifications were the traditionally female, and they were just displaced.

Senator **Evans**. Just two other questions, Mr. Chairman. You say that you have never sought Federal or State legislation on comparable worth, especially as it relates to mandates or regulations. I don't presume you would include in that either the current proposal which is now before this committee, which is a proposal to do essentially what you did. It would convene an internal study of the Federal classifications and then presumably, depending on what the results show, carry out some corrective measures within the Federal civil service.

Mr. **Isaac**. I would say that my position here is as an invitee to provide information on what we did, not as a proponent for what you as an employer must do to take care of your own work force.

Senator **Evans**. But legislation that aims only internally and at our own work force would not fall within that concern of yours about Federal or State legislation?

Mr. **Isaac**. Oh, no. It is obvious after we were overruled that we have some great concerns about what Congress would do with respect to interfering in local employer-employee benefits, and even mandating collective bargaining, which I think would be inappropriate. We have determined that on a local level.

Senator **Evans**. Your final paragraph says the impact of the program has been increased morale and productivity and improved employee relations throughout the work force.

Have you had anybody in the business sector in Colorado Springs who suggests that those are inappropriate results?

Mr. **Isaac**. They might. We have critics. All government does.

But when the per capita cost of government adjusted for inflation has gone down in the last 10 years in Colorado Springs, I would say that we have a productive work force. The studies that have been done with respect to specific areas similar to electric production transmission and distribution have shown they are highly productive and becoming more productive.

Senator **Evans**. Those are three of the most important end results of any enterprise, public or private. Good morale, high productivity, and good employee relationships.

Mr. **Isaac**. I would say good business.

Senator **Evans**. Sure.

Mr. **Isaac**. And low turnover.

Senator **Evans**. I appreciate very much your willingness to come before us and share your experience.

Thank you.

Senator **Stevens**. Senator Gore?

I might say, we are trying to limit the proponents and opponents to 30 minutes each. If there is no objection, we will try to have the witnesses use 20 minutes of that 30 minutes. We get 5 and you on your side will take 5 so we will try to balance this between proponents and opponents.

Senator **Gore**. That will be fine. I don't anticipate taking that much time.

I apologize for coming in after you completed your prepared statement, but I have reviewed it, and I appreciate the contribution you have made to the subcommittee's hearing.

Based upon your experience, would you have an estimate of the amount of time which might be involved in conducting an appropriate study of the Federal Government? Should a specific time limit be imposed?

Mr. ISAAC. I really couldn't; I don't feel qualified to answer that. I can only make one comment on a study. If you do study, you better be ready to implement it if you find it. Washington found that out.

Senator GORE. Do you think that such a study should be limited to one or several agencies at the outset or that the entire Federal Government should be studied at the same time?

Mr. ISAAC. Once again, I think that is for the Federal Government to determine as an employer. I know the State of Minnesota studied all 35,000 employees. I don't know how long that took, but they operate a little bit differently, because they also mandated on all the local governments. I don't know how long it took to do that.

Senator GORE. Could you elaborate just a little bit on your comment that spouse following may provide a partial explanation for wage caps in some instances?

Mr. ISAAC. As a policymaker and not as a personnel director, I can only accept that from an expert, an excellent personnel director we have, that two factors were considered as possibly affecting lower pay that were not in the area of discrimination; one was pregnancy, and the other was spouse following.

Since that time, he has indicated the issue of pregnancy, at least as far as the experts are concerned, has been pretty well discredited as a reason for a difference in the market.

The spouse following is still a question, and we took as good a guess as we could, and I will say it is nothing but a guess, and it was agreed upon by the employees and the administration that that would be an appropriate amount.

I can't tell you what that is.

Senator GORE. How does that affect the pay?

Mr. ISAAC. The reason it could affect the market and be a factor other than one of sex discrimination, which would result in your line being different, we were sure that it did not amount to 100 percent, obviously, that difference, and that 20 percent was an appropriate amount as the best estimate from an expert.

Now, the way that can be figured, of course, is to have sufficient data, I would think, across the entire market, including the private sector as to turnover, as that was indicated, with the necessary surveys as to why people leave.

In our area, I think some of that must exist because of the military and the military wives.

But the percent, we think 20 is appropriate.

Senator GORE. All right. Thank you very much.

Mr. ISAAC. Thank you, Mr. Chairman.

Senator STEVENS. Thank you again, Mr. Isaac. We appreciate it.

Mr. ISAAC. Thank you. Thank you very much.

[Mr. Isaac's prepared statement with attachments follows:]

TESTIMONY OF

MAYOR ROBERT M. ISAAC

COLORADO SPRINGS, COLORADO

Before the

SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE

AND GENERAL SERVICES

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

on

"OPTIONS FOR CONDUCTING A PAY EQUITY STUDY
OF FEDERAL PAY AND CLASSIFICATION SYSTEMS,"
A REPORT OF THE GENERAL ACCOUNTING OFFICE

July 24, 1985

COMPARABLE WORTH

In October of 1980, a group of 36 female employees appeared before City Council to protest the proposed salaries for clerks and secretaries for the forthcoming year. They had compared the proposed salaries for their classifications to those for traditional male classifications. They believed that the results were unfair because their classifications were surveyed on a local market and the traditional male classes were surveyed on both local and external markets. Therefore, their request was that the clerical and secretarial classifications be surveyed using external markets as well.

In response to that request, our Director of Personnel stated that the Denver external market in question did not have an effect on Colorado Springs' ability to attract and retain quality clerical and secretarial employees and should not be used in setting salaries for the subject classifications. He further stated that he believed the issue in question was one of comparable worth rather than of salary survey markets and presented three recommendations to City Council:

1. To form a clerical/secretarial employee group to meet with the Department of Personnel and provide for a mutual exchange of information.
2. To invite a speaker with national credibility in the field of sex discrimination to Colorado Springs to address City Council, employees, and the public.
3. To hold a City Council work session on comparable worth.

The recommendations were approved. A clerical/secretarial employee group was formed and the exchange of information and viewpoints began. This was an important step in the process as it led to mutual trust and cooperation between the employees and the administration.

Eleanor Holmes Norton was invited to Colorado Springs, and on May 5,1981 she addressed Council, employees, special interest groups, and the public on comparable worth.

A City Council work session was held on June 2, 1981, and a plan to address the inequity between traditional female and traditional male classifications within the City salary structure was approved.

Colorado Springs utilizes the Hay Guide Chart Profile method of job evaluation. The study, accomplished by Hay and Associates, was implemented in 1978 in order to establish internal equity throughout our work force. While we agree that all job evaluation methods incorporate both objective and subjective measurements, properly managed and administered methods are able to measure comparability We believe the Hay method to be valid and highly reliable, the optimum blend of the objective and subjective elements which are unique to each employer. Once internal equity is established, the classifications which comprise our various labor groups are correlated with salary survey data received from their respective labor markets. This technique creates a separate salary line for each labor group. The separation between such salary lines is a function of market forces, reflecting the different rates of pay for different skills, trades, and professions, and is easily justified on other than sex discrimination grounds. However, in the case of traditional female job classifications, we found no valid justification for the $200 - $400 per month separation between comparable jobs on the clerical/secretarial salary line and the maintenance/operations salary line. Females have always worked for less, and our analysis supported that statement. Adopting a valid reason for the disparity was basic to our decision to remedy the situation. We concluded that females have always worked for less because they have always been offered less, not as a function of a free market, rather as a function of sex discrimination. The market survey revealed the discrimination. All traditional female classifications in our work force were similarly affected, as evidenced by the sample of ten classifications in the attachment.

It was determined that salary survey data received from any traditional female labor market was tainted by sex discrimination practiced in the employment and compensation of females. It was agreed upon by City Council, the employees, and the administration that only 80 percent of the inequity related to such discrimination. It was our position that the remaining 20 percent, although based on sex, was a function of spouse following and not illegal discrimination. Spouse following is characterized by the female changing jobs at the optimum time for her spouse's career rather than her own, with resulting negative ramifications on her salary and her market. Therefore, the comparable worth plan, phased over four years, eliminated 80 percent of the difference between the clerical/secretarial salary line and the maintenance operations salary line. The salaries implemented in January 1985 completed the four-year phased program. The effect of spouse following is still under review to determine the validity and extent of its effect.

We believe that the most significant single barrier to comparable worth is that of multiple job evaluation systems. Employers with such multiple systems are unable to make valid comparisons across their work force in order to determine comparability. We believe that multiple job evaluation systems are for the most part not necessary and present an artificial barrier to comparable worth.

In addition, we believe that the laws of supply and demand will not solve the problem, now or in the future. Females have and in the future will continue, out of necessity, to work for less. As a result, the salary survey data from traditional female markets will continue to be tainted with sex discrimination. It is our philosophical position that the laws of supply and demand must be taken into account when establishing salaries but only when the market separations are natural, a result of the free market system. When a market separation is unnatural, artificial or contrived, as one produced by illegal sex discrimination, we have chosen to reject such data so as not to condone the discrimination behind the data.

In summary, I emphasize that we have chosen to provide a correction for employees in traditionally female jobs to compensate for discrimination we find in the survey data. This action is in keeping with our goals of maintaining internal equity and external competitiveness for our work force of 3,000. This decision is in keeping with our definition of comparable worth, i.e. equal pay for work of comparable value to our organization.

I make this point to assure you that characterization of our program by some commentators, as one which contemplates comparing librarians and mechanics nation wide is clearly in error.

We have never sought federal or state legislation on comparable worth, and in fact we fear additional mandates and regulations; nor do we care to force our decision upon other employers. We believe we can handle these matters locally, and have done so, without unions, without strife, and at relatively small cost.

We are proud of our accomplishments with comparable worth. The impact of our program has been increased morale and productivity and improved employee relations throughout the work force. Male and female employees alike were heartened by the fact that the City was willing to grapple with a controversial issue and to step boldly into the future.

COMPARISON OF SALARIES OF MAINTENANCE/OPERATIONS CLASSIFICATIONS TO CLERICAL/SECRETARIAL CLASSIFICATIONS - 1982, 1983, 1984, AND 1985

	CLERICAL/SECRETARIAL				MAINTENANCE/OPERATIONS		
Year	Eval. Points	Classification	Published Salary	Percent M/O to C/S	Published Salary	Classification	Eval. Points
1982	208	Office Section Supervisor I	1389	123.0	1709	Probation Counselor	208
1983			1458	123.0	1794		
1984			1740	109.4	1903		
1985			1931	104.5	2017		
1982	213	Administrative Secretary	1410	123.4	1740	Electronic Maintenance Technician	213
1983			1481	123.4	1827		
1984			1766	109.4	1932		
1985			1961	104.5	2050		
1982	220	Senior Accounting Clerk	1441	123.7	1782	Carpenter Working Foreman	220
1983			1513	123.7	1871		
1984			1803	109.5	1974		
1985			2003	104.6	2095		
1982	261	Office Section Supervisor II	1616	122.0	1971	Radio Technician	257
1983			1697	122.0	2070		
1984			2017	108.8	2195		
1985			2252	102.5	2308		

COMPARISON OF SALARIES OF MAINTENANCE/OPERATIONS CLASSIFICATIONS TO CLERICAL/SECRETARIAL CLASSIFICATIONS - 1982, 1983, 1984, AND 1985

	CLERICAL/SECRETARIAL				MAINTENANCE/OPERATIONS		
Year	Eval. Points	Classification	Published Salary	Percent M/O to C/S	Published Salary	Classification	Eval. Points
1982	98	Receptionist	918	116.3	1068	Parking Enforcement Officer	98
1983			1007	111.3	1121		
1984			1154	107.9	1245		
1985			1258	103.4	1301		
1982	117	Administrative Clerk II	1000	117.5	1175	Park Maintenance Worker I	116
1983			1085	113.7	1234		
1984			1255	107.7	1352		
1985			1374	103.2	1418		
1982	122	Cashier	1020	118.8	1212	Identification Technician I	122
1983			1105	115.2	1273		
1984			1282	108.3	1388		
1985			1405	103.6	1456		
1982	141	Secretary	1115	116.5	1299	Draftsman I	141
1983			1184	115.2	1364		
1984			1383	108.6	1502		
1985			1521	103.9	1580		
1982	147	Utilities Service Representative	1128	118.4	1336	Equipment Partsman B	147
1983			1208	116.1	1403		
1984			1414	108.7	1537		
1985			1558	103.9	1619		
1982	177	Administrative Clerk IV	1257	121.1	1522	Facilities Maintenance Mechanic	177
1983			1331	120.1	1598		
1984			1574	109.1	1717		
1985			1741	104.2	1814		

Senator STEVENS. Our next witness is Frank Morris, from Epstein, Becker, Borsody and Green, representing the National Legal Center for the Public Interest.

I hope you will agree with the amount of time we discussed, Mr. Morris. We are glad to have your presentation.

TESTIMONY OF FRANK C. MORRIS, JR., ATTORNEY, EPSTEIN, BECKER, BORSODY AND GREEN, P.C., REPRESENTING THE NATIONAL LEGAL CENTER FOR THE PUBLIC INTEREST

Mr. MORRIS. Thank you very much, Senator Stevens, Senator Gore, and Senator Evans. We appreciate the opportunity to appear here this morning on behalf of the National Legal Center for the Public Interest and to address S. 519, because we think this is a very important bill, which though described in limited terms, we believe has much more significant impact in the precedent it would set, not only for Federal Government wage setting, but in the clear affect that it would have in litigation.

Let me say a couple of things at the outset that I want to be clearly understood. Both the National Legal Center and I personally are strong advocates of the full enforcement of the equal employment opportunity laws and the affirmative action principles that have been at work in this country for at least 20 years. We believe, in fact, that a look at the record will demonstrate that substantial progress has been made as a result of the existing laws and regulations and that, indeed, the indicated pay gap that still exists is really a result substantially of the great influx of women into the labor force of this country, which has tended to hold down average earnings, but that the more pertinent studies of the current earnings of the similarly situated males and females in the work force do not demonstrate the conventionally mentioned gap between average earnings of those who are not truly comparable based on service, based on education, based on experience, based on labor market continuity.

Turning expressly to the bill, I would like to outline some of the principal points we make in our written testimony. I think it is important at the outset to know what this bill is about and the direction of the testimony that we seek to take.

First, we would like to demonstrate that S. 519 is, indeed, a bill substantially related to comparable worth, second, that it is based on erroneous assumptions, third that the notion that the results of the study that would be authorized by S. 519 could not be kept out of subsequent court litigation either brought by employees of the Federal Government or perhaps by other employees who wish to cite it as evidence in such litigation, and that the ramifications of S. 519 as I originally suggested would be overturned to the discredited doctrine of "separate but equal" in the workplace.

Just as this doctrine was discredited in the schools, it should not be encouraged in the workplace.

The clear implication has been that this bill is not a comparable worth bill. But we are constrained to say that the stated purpose of the bill is to authorize a study "—to determine whether Federal jobs are appropriately classified, graded and paid and whether the wage-setting practices in executive agencies of the U.S. Government are in compliance with applicable laws and regulations prohibiting sex-based wage discrimination in Federal employment policies and practices."

I suggest to you, therefore, that no study is now required if that is, in fact, the purpose of the bill. Because there is virtually unanimous agreement that every fair employment law in existence today does not embrace the comparable worth doctrine. Each of the three U.S. Courts of Appeals that have considered this issue have so concluded. Numerous U.S. district courts say, in the celebrated *AFSCME* v. *State of Washington* case; the two principal Federal EEO enforcement agencies, the United States Civil Rights Commission and the Equal Employment Opportunity Commission, have all taken the view that the law neither requires nor is there wisdom in taking the comparable worth approach.

Now, as we move on to look at the bill, the bill would require a study premised on the notion that there should be a comparison of predominantly male and female dominated job rates, and this comparison should involve skills, effort, responsibilities, qualifications and working conditions, which although not identical, are equivalent in totality.

It is that equivalent in totality language which we submit is the language which, in fact, makes this a comparable worth bill.

If you recall the present Federal wage setting structure, there are several features to it. As to the Federal blue collar workers, there are prevailing local wage rate surveys. As to the others, as to white collar workers, there are fixed across-the-board increases determined by the President after consultation with the Federal Employee Pay Council, and there are special rates, of course, for hard to fill positions, further recognition that labor factors must come into play.

The legislation at issue would lay the groundwork, we suggest, for imposing upon the Federal personnel system the doctrine of comparable worth, which is not cognizant under the present law.

The present system for determining the worth of a particular position in the Federal practice is important to look at. The proposed legislation talks about a comparison of occupations which were predominantly female versus those predominantly male, but different in the nature of the job functions which are performed. This is precisely the classic comparable worth theory. That is why we say it is impossible to conclude that this bill is not a comparable worth bill.

We have also suggested to you, however, that present law does not embrace this concept. Now, the further and important concept is the rejection of marketplace considerations. That is, of course, the tenet of those who support the comparable worth doctrine who say the marketplace builds in discriminatory factors. I don't believe, however, that there has been any adequate study which demonstrates the differences in average compensation for males and females as a probative statistic to look at; or that the extent of that difference is, in fact, the result of discrimination, at least not discrimination as ever previously defined in the laws passed by this Congress.

Previously, the Congress has required a showing that an employer has engaged in improper activities which have had a discriminatory effect because there was a consideration not of the qualifications, skills, abilities, or objective factors concerning individuals, but rather a look at stereotypes considering groups of individuals either because of race or sex or other characteristics.

This rejection of the marketplace characteristic, therefore, is a substantial departure from the principles laid down in the other legislation passed by Congress.

The scope of the present discrimination law has been briefly outlined. I think this committee is well aware of it.

What I should now like to turn to is what I view as the erroneous assumptions that underline S. 519. The bill assumes that if there are predominantly female occupations which are paid less than predominantly male occupations, then there is a gap attributable to sex discrimination. The previous witness seemed to adopt that point of view, as well.

There are, however, numerous other explanations for any differences that exist. They are substantial in number, and I will not attempt to identify them all, nor is it necessarily clear that they can all be identified. But clearly such items as continuity in the labor force, prior experience, prior education, willingness to relocate, willingness to engage in jobs which are dirty, which are dangerous, which are not pleasant all relate to the matter of what will be paid for particular jobs.

Moreover, there is no clear virtue in the notion that there is any ability to extrinsically determine, if you will, some theoretical value to a given employer on a particular job that does not take into account what that job will command in the marketplace.

In the absence of some clear development of the law that says an employer is not permitted to rely on the marketplace, what S. 519 would do to the Federal Government and then provide a basis for doing to the rest of the economy is to divorce the reality of what particular skills, qualifications and abilities in a particular labor market can command on the notion that there is something wrong in general with the compensation pay to women in the United States.

That should be recognized as something perhaps which Congress wants to address, but not as a matter of employment discrimination law.

There is no evidence that the Federal Government's pay system discriminates on the basis of sex, as is suggested by the underlying premise of this bill, and that is the premise that a consideration of the totality of factors comparing predominantly female and predominantly male jobs would yield a difference based on a finding of sex discrimination in employment.

That, we believe, is the other underlying problem in the assumptions for this bill.

I also wish to address the point of job evaluation and whether or not there is such a thing, as the bill would say, standard objective job evaluation techniques. Can some objectivity be brought to this process? Clearly so. Is the process, however, susceptible of being made completely objective as those who would rest the entire pay setting system on it true? The answer to that is clearly not so. There is no singular objective job measurement system. In fact, what happens in the process is this: Someone, the job evaluator, rates what is involved in a particular job, a particular occupation.

They look at the functions; they look at its desirability; they look at the working conditions, and they assign values or weights. Needless to say, the person doing the rankings will greatly affect what weight or value is given to a particular qualification, a particular aspect of the job performance, or the working conditions in which such a job is performed.

In other words, there can be no objective value of every job, and if three evaluators come in and evaluate the same job, undoubtedly, there would be three different results. Multiply that example by however many job evaluators are involved. That is the difficulty.

This bill would seem to assume that there is a "standard objective job evaluation technique."

While there are many job evaluation techniques, some of them more widely used and recognized than others, they are, in fact, attacked by those who are proponents of the comparable worth doctrine, because they say, "These are the job evaluation systems which have downgraded jobs predominantly held by women."

So I suggest to you that the bill cannot, in fact, use standard job evaluation techniques, but would have to use something other than presently existing standard job evaluation techniques if it is to reach its apparent goal.

I would point out to you one other thing on this topic. The National Academy of Sciences was vested by the EEOC several years ago with the authority to study job evaluation in this country and to determine whether or not a bias-free job evaluation system was possible.

One of the principal authors of the National Academy study concluded that there is no strictly scientific method for determining the standards of job worth. She went on to say, "What a job should be worth is not a scientific question."

I suggest to you that that is, therefore, one of the erroneous assumptions of the present bill.

The committee has expressed some interest in the notion of whether, S. 519 and the study is conducted, what the results may be, what results will occur, and what use may be made of the resulting report and study.

The question has been raised, is it possible to, if you will, attempt to avoid a situation like the State of Washington found itself in when having conducted one job evaluation which suggested certain problems, not immediately implementing it and then finding itself involved in litigation with the end result that it is faced by a judgment that is said to approach $1 billion. The case is on appeal and the legal reasoning is suspect to substantial question. I suggest to you that the use of such a study could not be limited in the future if it is conducted pursuant to S. 519.

A challenge to a State compensation system, we know what has happened. One study has been used. Now what we find here is that I think the proponents and opponents of S. 519 should understand that if this bill passes, I believe there is no constitutional way to insulate the resulting study from use in the courts of the United States and in the courts of the States.

Now, to consider such a limitation if one were proposed, it is useful to make an analogy to the restriction on court review by those who would advance legislation to limit court jurisdiction over controversial subject matters. Since the mid-seventies, a spate of bills proposing to limit Federal jurisdiction or limit Federal court authority to prescribe certain kinds of remedies, for example, in the areas of abortion, prayer, and school busing to name the three most prominent.

Those limitations here on the use of this comparable worth study share one goal: That is, through legislative intervention or abstention, to influence the outcome of a judicial proceeding.

In reviewing a proposed limitation on court use of a comparable worth study, I follow a framework which has been used by many legal scholars of constitutional issues in this area. We consider how this restriction attacks the most judicial framework of authority, how the unconstitutional ends would be brought about by the use of such a restriction.

There are three essential elements to the Federal judicial authority which such use of a restriction on the study of S. 519 would impact. First, the ability of the Federal courts to review State conduct; second, the ability of the Federal courts to review Federal executive and legislative conduct; and third, the need for judicial independence of the other branches of Government.

Review of State conduct. The Supreme Court has occasionally allowed Congress to tamper with its own jurisdiction. However, since at least 1816, the Supreme Court has never waivered in its insistence on its authority to review State court determinations. Oliver Wendell Holmes stated, I think appropriately, "I do not think the United States would come to an end if we lost our power to declare an act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several States."

The power of the Supreme Court to deal with State court judgments dates back to one of the earliest acts of Congress, the Judiciary Act of 1798, in section 25.

Restriction on the use of the comparable worth study would surely reach the Federal courts and State courts—could only reach the Federal courts. The State court would clearly be left to use the study as allowed or disallowed by State constitution or evidentiary principles. Because the Federal courts are not the exclusive forum for syndicating constitutional rights, employees could pursue suits in State court and use the study irrespective of any limitation in the Federal courts, even if we included, as I do not believe correct, that such a limitation was permissible in the Federal courts.

Let's assume a series of events. For example, the State court of State X makes a ruling about Federal constitutional rights to comparable pay based on the study which S. 519 would authorize.

Appeal is then taken to the Supreme Court. What is the Supreme Court to do on the appeal of that State court judgment? Ignore the record of the State court, which relied in substantial measure on the S. 519 study? Or to decide the case without reference from the State court record, or to create a whole new record in deciding the case?

Obviously, each of these present untenable options to the Supreme Court and would suggest that it is impermissible to proceed in such a fashion.

Let's take the second area of consideration, a review of the Federal executive and legislative conduct. Again, let us suppose that the survey has been completed, the study is done and an employee now brings suit alleging discrimination in Federal pay and wanting to cite the study as evidence in that case. Let us say again also that the study vindicates the Federal pay-setting systems, and OPM or a Federal agency wants to rely on the study in defending such a suit.

For now, consider with me the likely court reponse that would be faced by constitutionally questionable executive or legislative conduct.

We get several constitutional kinds of issues here. As appropriations are involved, the constitutionality of a legislative enactment is first at stake. Second, executive actions would likely be challenged. Further, assume the study is the key of dispositive evidence in such a suit, as it might very well be. Then the scrutiny as to the constitutionality of executive or legislative actions would be important, because Congress has attempted to place the study out of the grasp of the litigant.

Will the Government be allowed to defend itself by excluding evidence that the plaintiff would wish to bring? Alternatively, if the study vindicates the position—I will summarize quickly, Senator—if the study vindicates the position of the government wage-setting, would that in effect prevent the government from relying upon the study in defending the case? In either event, a serious problem in terms of the litigation of cases is presented. The court has refused to allow Congress to close off the courts themselves for challenges on constitutional rights. It seems likely that the Congress could not remove the ability to hear constitutional claims brought by individuals through the method of removing the evidence upon which these individuals would prove their constitutional claims.

As to the judicial independence point, I think we can briefly say judicial independence would be impaired here because article 3 courts of course, are supposed to vindicate constitutional rights. Congress has had substantial experience recently with the bankruptcy courts and the Bankruptcy Act dealing with the interplay on article 3 courts and the limitations. We would suggest that the limitation of the study would impinge again in this area and bring important conditions to bear.

The transfer of authority away from article 3 courts is a very limited power and nothing that is suggested by this bill would suggest that the courts would find limiting the study to sitting in Federal bookshelves as a reasonable response and that it would, in fact, be an unconstitutional infringement.

Senator STEVENS. Let me interrupt you. I do want to keep on this schedule. I think Mr. Gore has some questions, too.

You seem to imply that you don't think it is possible for us to write a provision into this bill that would limit its use to congressional use only and restrict its availability in any litigation in Federal courts. Is that your position?

Mr. MORRIS. That, Senator Stevens, as I analyze the constitutional law on such issues, is in summary, yes, the position.

Senator STEVENS. Have you seen the provision I wrote on the Alaska Pipeline Act that closed the door to any attack except the constitutionality of the act itself and gave 30 days to do it? As a lawyer I am confident I can write a provision in here that will limit the use of this for the legislative purpose and not to have any impact on any litigation anywhere and forbid the courts to use it in any way and to give anyone who wants to disagree with that about 30 days to challenge it, and if they challenge it, to void the act.

Now, what is wrong with that? I think you are a good lawyer. I think you could draw it before the court just as quickly as I could.

Mr. MORRIS. That provides a basis for challenging the act, and it might pass muster. The effect would be to make S. 519 a multi——

Senator STEVENS. Only if the court finds that we can't do what we said we can do. I am confident the courts will not deny us access to information we need to continue the legislative process. You have given a very scholarly presentation, but unfortunately, in my judgment, it overlooks the ingenuity of those who practice our trade, Mr. Morris.

Mr. MORRIS. Certainly one of the most ingenious pieces of legislation was that involving the Alaska pipeline and limiting the number of environmental lawsuits that could be brought.

Senator STEVENS. They can't be brought at all. You have to challenge the constitutionality of the act saying it can't be brought. It worked. The pipeline is putting out 1.7 billion barrels of oil a day because of it.

I don't see there is any reason to legalize this proposition. If there is a great fear that this result is going to be used contrary to the best interests of the United States, I will fix it so it can't. In my judgment, that is the end of that one, unless you can argue with me that I can't do it.

Mr. MORRIS. I think there are those who would argue. Let us assume for a second, could we assume for a second, Senator, that the result of the study the way the bill is written is to find that there are pay discrimination issues based on the comparable worth theory in Federal compensation practices.

Senator STEVENS. That is immaterial as long as it can't be used in court.

Mr. MORRIS. Well, if you assume with me for a moment that that is the result of the study, clearly, for example, the Federal employee unions would try to use that study in Federal court. I think that is an almost inescapable conclusion. They would allege that there are equal protection violations in pay to Federal female employees. I think the courts may have some trouble in saying there is probative evidence of such discrimination as contained in the study authorized by S. 519, and that that is inadmissible evidence.

Senator STEVENS. I disagree with you. I think the Congress can close the courts, the Federal courts, to any kind of activity we want to close them to provided we give the person that is denied the right to use the evidence the chance to go to court and challenge the constitutionality of the act.

Mr. MORRIS. It is possible that that conclusion is correct, Senator. To tell the truth, I hope very much that that is true, because if S. 519 is passed, that may be the only way of preventing the study which almost demands to have a conclusion that will find comparable worth-type discrimination from ending up in litigation.

Senator STEVENS. You are saying that others may disagree with me. They may want to have that information be available, in which event there is a fellow that lives down at 1600 Pennsylvania that has got a pen that would stop that bill. I sort of figure that this thing is going to work out.

Senator Gore.

Senator Gore. Thank you, Mr. Chairman.

Mr. Morris. you state on page 13 of your statement that there has been no definitive studies which prove that the wage gap is due to sex discrimination.

Whether or not that is the case, do you believe that there is any appropriate way of measuring the gap and the reason for it?

Mr. Morris. Senator, I believe there are ways of measuring part of the gap. You can examine a number of factors which clearly account for very substantial part of the average earnings gap. I think because there are factors which are essentially incapable, however, of quantification, that is, the desire of some women because of their desire to raise families to engage in different kinds of occupational choices that are probably ultimately impossible to measure.

Senator Gore. Do you believe that any part of the gap is due to sex discrimination?

Mr. Morris. Part of the gap may be due to sex discrimination, but the part that is, I suggest, is remedial under present legislation by enforcing full and open opportunity for all positions and promotions.

Senator Gore. Well, the GAO says that the job content and economic analysis approach does account for the subjective factors that you have trouble with. The GAO report states that job content studies cannot perfectly measure or eliminate discrimination but that such studies do help to eliminate some of it.

Isn't it reasonable to suppose that if, as you indicated, sex discrimination may be a part of the problem, an effort to understand all the factors susceptible to analysis might heighten awareness of those factors that are more difficult to articulate, and through increased understanding and sensitivity, lead to a reduction in the amount of discrimination encountered?

Mr. Morris. Senator, it seems to me that the possible discrimination that exists is not of the sort that S. 519 is premised upon, but rather in ensuring that, in fact, there is equal pay in situations where the work requires equal skill effort, responsibility under similar working conditions, and ensuring that every female as well as every other individual is considered without regard to their sex, their face, their color, their handicap, their religion or other factors and that the study S. 519 would undertake, I don't believe, would shed any light on those factors.

So I am not confident that S. 519 would advance us in knowing whether there are still any areas where, for example, for some reason, title VII ~~is not~~ yet fully ensuring equality of opportunity to any individual woman or any individual that falls within any of the other protective groups under our equal employment laws and regulations.

Senator Gore. You indicate that many impermissible sex considerations have been eliminated.

Mr. Morris. That is correct, Senator.

Senator Gore. Can you list examples?

Mr. Morris. Things like height, weight.

Senator GORE. Sex considerations.

Mr. MORRIS. Well, typically, for example, height and weight restrictions have been very sex discriminatory, because they set it at 5′7″ and 150, which is the main discriminatory effect upon was women.

Senator GORE. All right.

Mr. MORRIS. Previous sex discriminatory examples in the airline industry, where there were no motherhood or no marriage kinds of rules that operated to prevent either individuals from being employed or continuing their employment, numerous others, the view simply that women were not qualified or capable of performing in certain positions, also clearly impermissible now under title VII. There are others.

Senator GORE. You wouldn't say that the list is complete, would you?

Mr. MORRIS. No; I would have to spend a bit more time, Senator.

Senator GORE. Not the list you have given, but the list of the factors eliminated is not yet complete.

Mr. MORRIS. I am sure that there will be additional situations to be found in the future that present law can redress.

Senator GORE. Your testimony addresses only S. 519, as I understand what you have said here. However, these hearings are on the GAO study.

Could you give me some comments on the study itself?

Mr. MORRIS. Insofar as the study relates to the comparable worth notion and a fuller examination, I did intend to submit, I think as part of our testimony, the National Legal Center's monograph on comparable worth, which addresses in greater detail than I obviously knew I would have in the testimony today, to give some of the other considerations.

The study lays out some of the considerations. It also lays out some of the difficulties in conducting wage comparisons and trying to identify every factor that might be involved in what a particular job is said to be worth in any particular area.

It also clearly addresses the fact that there is still some work to be done in ensuring that every job is open based purely upon the objective qualifications of individuals and not on other factors.

But the GAO study, I think the other important thing to note about it, is using the economic analysis to study sex-based wage differentials. I think it points up serious problems about that and that it is a very difficult process.

Senator GORE. Thank you very much for your testimony.

Thank you, Mr. Chairman.

Senator STEVENS. I appreciate it. Thank you very much, Mr. Morris. We will be working with you as we go forward.

Mr. MORRIS. Thank you.

[Mr. Morris' prepared statement follows:]

TESTIMONY OF THE
NATIONAL LEGAL CENTER FOR THE PUBLIC INTEREST

Before the Subcommittee on
Civil Service, Post Office and General Services
of the
Governmental Affairs Committee
United States Senate

Hearings on S. 519 and Federal Employee Compensation Equity

Submitted by:

Frank C. Morris, Jr.

of

EPSTEIN BECKER BORSODY & GREEN, P.C.
1140 19th Street, N.W.
Suite 900
Washington, D.C. 20036
(202) 861-0900

Introduction

Mr. Chairman, I am Frank C. Morris, Jr., a partner with the law firm of Epstein Becker Borsody & Green (see attached biographical sketch),* and I appear before you today to testify on S. 519 on behalf of the National Legal Center for the Public Interest.

The National Legal Center for the Public Interest is a non-partisan, educational legal foundation concerned with the judiciary and the response of the elected branches of government to judicial initiatives. The Center's philosophical base rests on:

- regard for the constitutional system of the United States and its separation of powers among the legislative, executive and judicial branches and the division of responsibilities between the federal government and the states;

- regard for the traditional values which have sustained the nation through private enterprise:

  - the rights of individuals
  - freedom of enterprise

---

* Mr. Morris gratefully acknowledges the considerable assistance of Kathleen J. Taylor, Esquire, an associate at Epstein Becker Borsody & Green, P.C. and Ronald Klain, a summer associate at the same firm, in the preparation of this testimony.

- private ownership of property
- balanced use and protection of private and public resources
- limited government

The Center serves the public and private sectors by providing timely information on key issues relating to the judiciary and the development of public policy. This is done through newsletters, monographs, conferences, and special projects of national importance.

For these reasons, the National Legal Center has a great interest in S. 519, even if S. 519 applies only to the federal government as it appears at first blush. Like other businesses and organizations, the National Legal Center recognizes that the federal sector often serves as a bellwether for both the public and the private sector. To paraphrase a cliche, what is good for the federal government is oft times later held to be good for the country. It is because of this profound interest in and concern over the separation of powers and the rights of individuals as reflected in what happens in the federal sector that I am here on behalf of the National Legal Center today.

We believe it is important at the outset of this testimony to stress that the National Legal Center for the

Public Interest vigorously advocates equal opportunity in all phases of employment, to include compensation. It strongly believes, however, that the proper emphasis is on ensuring the opportunity for all qualified individuals, without regard to such factors as sex, race or age, to maximize their potential and to obtain highly paid positions commensurate with their skills, education and training in our society.

Moreover, as a personal matter, I take with the utmost seriousness as both a moral and legal commitment the promotion of both full equal employment and real affirmative action in every job and in every trade, occupation and pursuit. I make this observation as to the Center and as to myself because many comparable worth supporters would brand opponents of this ill conceived theory as opponents of true equal employment. They apparently do so to chill thoughtful consideration of this theory which cannot withstand scrutiny. That comparable worth cannot withstand scrutiny is illustrated by the fact that the three United States Courts of Appeals to consider the theory have all rejected it, as has every District Court save one, and both principal federal agencies addressing fair employment matters, the Equal Employment Opportunity Commission and the U.S. Civil Rights Commission.

The country has made great strides over the past two decades towards achieving equal employment opportunity for women. Numerous barriers based on impermissible sex considerations have been eliminated allowing substantial progress toward sexually integrating the workforce -- both in the federal and private sector -- at every level. Women are increasingly moving into what have long been regarded as "traditionally male jobs." One of the most meaningful gains, for example, has been in the category of "executive, administrative and managerial occupations." In 1970, women comprised 18% of this occupational group; by 1980 they had achieved a 30.5% representation. (R. Williams and L. Kessler, A Closer Look at Comparable Worth, 78 n.7 (1984)).

Despite the achievements attained in barely two decades, much dissatisfaction continues to be registered with the overall progress made to date by women in the workforce. One cannot objectively deny that women continue to fill, in large percentage, the lower paid positions in the economy. Nor can one refute the fact that help wanted ads in newspapers in this country continued to be segregated by sex until the late 1960s. However, proponents of S. 519 do a disservice not only to the Congress and the federal service but the nation itself by shifting the focus away from promotion of equality of opportunity -- a proven method of real redress -- towards implementation of comparable worth -- a totally unproven and unworkable theory that has nothing to do with discrimination by any employer, public or private.

My testimony today will center on four issues dealing with the proposed legislation:

1. Why S. 519 is indeed a comparable worth bill;

2. The erroneous assumptions underlying S. 519;

3. Why the proposed exclusion of any S. 519 wage study from use in subsequent discrimination litigation as evidence is unconstitutional; and

4. The ramifications of S. 519 if enacted -- perpetuation of the doctrine of "separate but equal."

S. 519 -- AN ATTEMPT TO IMPLEMENT THE DOCTRINE OF COMPARABLE WORTH

We are aware that Senator Evans insists that his proposed legislation is not a comparable worth bill per se. With all due respect to the Senator, however, we are constrained to observe that the bill is likely the critical first step in an attempt to mandate the doctrine of comparable worth in the federal government. The stated purpose of the bill is to authorize a study "to determine whether Federal jobs are appropriately classified, graded and paid and whether the wage-setting practices in executive agencies of the United States Government are in compliance with applicable laws and regulations prohibiting sex-based wage discrimination in Federal employment policies and practices . . ."

I submit to you that no new study is required to determine that the wage-setting practices of the United States Government are indeed substantially in compliance with applicable laws prohibiting sex-based wage discrimination. Two statutes, Title VII and the Equal Pay Act, prohibit such discrimination. Title VII proscribes discrimination on the basis of sex, race, religion, creed, color and national origin with respect, inter alia, to compensation. The Equal Pay Act requires equal pay for individuals performing substantially equal work regardless of their sex unless the pay differential is based on seniority, merit, quantity or quality of production, or any other factor other than sex. 29 U.S.C. § 206(d)(1). Both have been the law of the land for over two decades and have been invoked by federal employees where necessary to redress discrimination in pay because of sex. (See, e.g., Report by the Comptroller General of the United States, Options for Conducting A Pay Equity Study of Federal Pay and Classification Systems, Appendix III, Section II, Relevant Cases.)

Moreover, by their very structure, the various federal pay-setting systems are bias free under current fair employment statutes. They have been established and revised based on objective considerations, such as utilization of prevailing locality market rates for determining federal blue collar rates; a fixed, across-the-board annual increase determined by the President, after consultation with the Federal Employees Pay Council, for white collar positions nationwide, and special pay rates for hard-to-fill positions when the Office of Personnel Management makes a determination that such a pay rate is necessary for recruitment purposes.

Rather, the legislation at issue would lay the groundwork for imposing upon the federal personnel system the doctrine of comparable worth, which is not cognizable under current federal discrimination law. (See, e.g., Spaulding v. University of Washington, 740 F.2d 686 (9th Cir.), cert. denied, 105 S. Ct. 511 (1984)). At bottom it appears to be an attempt to do indirectly what proponents of comparable worth have been unable to do directly -- implement comparable worth within the federal government.

A. DETERMINATION OF THE WORTH OF A POSITION

The proposed legislation requires the comparison of occupations which are predominantly female with those that are predominantly male to determine whether the rates paid to the predominantly female positions are lower than those paid to the predominantly male positions although the work performed, while not identical, is equivalent in totality of factors considered. Thus the S. 519 study would focus solely on occupations which are predominantly male or female. The classic comparable worth doctrine also looks at jobs in predominantly male occupations and compares them to jobs in predominantly female occupations to determine what each job's theoretical or supposed intrinsic value is to the employer. (*See* Blumrosen, *Wage Discrimination, Job Segregation and Title VII and the Civil Rights Act of 1964*, 12 U. Mich. J.L. Ref. 397 (1979)). Under the comparable worth doctrine this comparison is accomplished through the utilization of a purportedly objective job evaluation plan where relative weights are accorded to valued job features such as skill, effort, responsibility and working conditions. Similarly, the instant legislation would require the use of "standard objective job-evaluation techniques" which would determine the overall worth of a position by assessing the Congressionally-mandated valued job features of skills, effort, responsibilities, qualifications and working conditions.

Under classic comparable worth theory, jobs are considered comparable which, although requiring an equivalent or lesser component of skills, effort, responsibility and working conditions, are assessed overall an equal amount of job evaluation points. Likewise, under S. 519, those positions which are clearly different but purportedly involve skills, effort, responsibilities, qualifications and working conditions which are equivalent in totality would be considered of equal value for the purposes of determining if wage discrimination based on sex exists in the Federal government.

B. REJECTION OF MARKETPLACE CONSIDERATIONS

According to comparable worth advocates, women are segregated into certain occupations. The rates paid to incumbents of positions in these predominantly female occupations are artificially low because the work performed is perceived as women's work. Thus, the classic comparable worth proponent completely rejects the consideration of the marketplace (i.e., consideration of the availability of and demand for particular skills in the market) in determining the value of a position, arguing that it is the marketplace which, reflecting stereotypes held by society, have led to the purported devaluation of "women's work." Therefore, comparable worth adherents would reject the determination of pay rates through use of a locality wage survey.

While the proposed legislation mandates the comparison of jobs in what is considered the federal white collar occupations with federal blue collar jobs, it is completely devoid of any mention, much less consideration of, marketplace factors. Yet the marketplace is an integral part of and indeed the heart of the federal prevailing wage system. (See 5 U.S.C. § 5343(c)). Such a noticeable omission clearly demonstrates the bill's underlying comparable worth orientation.

C. THE SCOPE OF PRESENT DISCRIMINATION LAW

Finally, it is evident that by its mandate S. 519 goes far beyond the scope of current discrimination law. As previously noted, the Equal Pay Act only requires a finding of discrimination in those cases where a wage differential based on sex exists between persons performing substantially equal work, which was purposely defined very specifically by Congress as work involving equal skill, effort, and responsibility performed under similar working conditions. Indeed, in enacting the Equal Pay Act, Congress specifically considered and resoundingly rejected the concept of equal pay for comparable work. (See the legislative history of the Equal Pay Act, 108 Cong. Rec. 14767 (1962)). Nevertheless, the bill before this Committee proposes to compare jobs which are by some abstract measure said in their totality to be equal, albeit involving differing degrees of skill, effort, responsibility, qualifications and working conditions. Moreover, the legislation would not take into account four recognized and Congressionally authorized reasons for validating wage differentials between the sexes: seniority, merit, quality and quantity of production, or any other factor other than sex. 29 U.S.C. § 206(d); 42 U.S.C. § 2000e-2(h).

Therefore, we submit that the true purpose of S. 519 is not to determine whether the wage-setting practices of the federal government are in compliance with present discrimination laws -- rather its plain if unarticulated objective is to promote comparable worth as a pay setting technique in the federal sector.

THE ERRONEOUS ASSUMPTIONS UNDERLYING S. 519

S. 519 contains two major assumptions which also indicate that it is in fact predicated on the doctrine of comparable worth. The bill assumes that if predominantly female occupations are paid less than predominantly male occupations the pay differential is attributable to sex discrimination. (Cf. Blumrosen, Wage Discrimination, Job Segregation and Title VII of the Civil Rights Act of 1964, 12 U. Mich. J.L. Ref. 397, (1979) (arguing that a presumption of sex discrimination is warranted wherever a job is sex-segregated, i.e., 70% or more of its occupants are women)). The second assumption upon which S. 519 rests is that it is possible, using "standard objective job-evaluation techniques" to determine whether predominantly male positions are "equivalent in totality" to predominantly female positions receiving less pay. I would like to explore each of these faulty premises.

A. THERE IS NO PROOF THAT JOB SEGREGATION PATTERNS IN THE FEDERAL GOVERNMENT ARE THE RESULT OF SEX DISCRIMINATION

As previously noted, comparable worth advocates, as well as apparently the proponents of S. 519, assume that where sex concentrated job groups exist, the existing wage differentials, if any, are the result of sex discrimination. This assumption is contained in Section 4(a)(1) of S. 519. Yet wage differentials between males and females in the government are not attributable solely, if at all, to discrimination. Rather, there are a myriad of determinative factors which cause the differentials to include seniority, training, education, experience, skills, abilities, performance, absenteeism, turnover, hours worked, willingness to work overtime and to travel, union membership, marital status, family status and, most important of all, individual choice.

There have been no definitive studies to date that prove that the wage gap between men and women in, or outside of the federal government, is the product of employer discrimination in the setting of wages. Nonetheless, the broad assumption in S. 519 is that all job segregation is based on employer discrimination rather than on the voluntary choice of the individual who is selective in deciding which position he/she is willing to accept. Individuals in our society, both male and female, have been conditioned as to the desirableness of certain kinds of work. Usually white collar occupations are considered to have more status than blue collar jobs. Women have also been programmed previously by society to enter certain vocations, while avoiding other occupations. For example, if the job of truck driver continues to be predominantly male in the federal government, there are two possible but quite different explanations -- the rejection by the potential employer of qualified female applicants or the lack of such applicants. Clearly the former, if true, is impermissible and can be fully redressed under Title VII. However, if the latter condition is the cause, the employer cannot be held at fault. Thus, Title VII is an effective means of removing whatever discrimination component, if any, contributes to job segregation in the federal government.

B. JOB EVALUATION IS NOT AN OBJECTIVE PROCESS

The bill, like comparable worth advocates, presumes that the worth of various jobs may be determined objectively through the uses of job evaluation techniques. However, all job evaluation systems have the same weakness - subjectivity. The National Academy of Sciences, in its 1981 treatise Women, Work and Wages (Donald J. Treman and Heidi I. Hartmann, editors, Washington, D.C., National Academy Press, 1981) noted that the use of evaluation systems to resolve purported pay inequities was problematic. As one of the editors of Women, Work and Wages stated "[i]n its report, the Committee stresses that there is no strictly scientific method for determining the standards of job worth. What a job should be worth is not a scientific question." (H. Hartmann, "The Case for Comparable Worth," Equal Pay for UNequal Work 11, 16 (P. Schlafly ed. 1984)). (emphasis added).

Job evaluation studies are, in essence, a series of subjective judgments about positions. A job description, used as the basis for evaluation, must initially be developed. Such descriptions will vary depending on the individuals conducting the evaluation because they are usually developed on the basis of a narrative description of duties provided by the job incumbent. Next the job description must be analyzed and evaluated by awarding points based on the "value" of certain job factors. Different raters often produce different evaluations of the same job because of the inherent subjectivity of the process.

Moreover, job evaluation techniques preclude considerations of such critical non-task related factors such as the marketplace. It is precisely in the marketplace that the relative worth of various job classifications may most objectively be determined. The marketplace establishes wages for various occupations by assessing the demand for particular skills and qualifications, together with the supply of individuals with the requisite skills and qualifications willing to perform under certain working conditions.

C. CONCLUSION

As a recent GAO report pointed out, the issue of wage disparity between the sexes is complex in nature. An approach such as that advocated in S. 519, based solely on the use of purported "objective" evaluation techniques is not sufficient in and of itself to explain the wage gap. (Options for Conducting A Pay Equity Study of Federal Pay and Classifications Systems, 1985). Rather, such an approach with its concomitant solution if adopted will only lead to the perpetuation of job segregated occupations, as I will discuss in greater detail later.

EXCLUSION OF THE S. 519 COMPARABLE WORTH STUDY AS EVIDENCE IN LATER LITIGATION IS UNCONSTITUTIONAL

One well intended possible amendment to S. 519 would seek to limit the use of the comparable worth study ("study") as evidence in any potential lawsuit brought by employees attempting to challenge an allegedly discriminatory pay scheme under the comparable worth theory. The use of such a study in a challenge to a state's compensation system, very familiar to this panel, was critical to the result in AFSCME v. State of Washington, 578 F. Supp. 846 (W.D. Wash. 1983), appeal docketed, No. 84-3569 (9th Cir. Jan. 26, 1984)in which the federal district court found wage discrimination by the State of Washington. The question has been raised, therefore, of whether a similar outcome following a federal sector study could be prevented if S. 519 contained a statutory limit on the study's use in any subsequent litigation.

I would like to suggest to this Committee that such a limitation appears to be completely untenable; almost certainly unconstitutional and likely to be found as such by any court which is faced with an effort by plaintiffs to introduce the study into evidence. I hope that this fact comes to be recognized by all concerned with the legislation: supporters and opponents alike should both be able accurately to assess and be aware of the possible consequences -- for both sides of the comparable worth debate -- that a federal study would create. Thus, I intend to devote some attention to the question of why such a restriction on the study's use would likely be ignored by a court faced with comparable worth litigation.

In considering such a limitation, it is useful to make an analogy to the restriction on court review propounded by those who would advance legislation to limit court jurisdiction over controversial subject matters. Since the mid-1970's, a spate of bills proposing to remove federal jurisdiction or limit federal court authority to prescribe certain remedies have been offered in the areas of abortion, school prayer, and busing, to name three. These bills -- like a possible limitation of the court's use of a comparable worth study -- share in common one goal: a legislative desire, through intervention or abstention, to influence the outcome of a judicial proceeding.

In reviewing a proposed limitation on court use of a comparable worth study, then, I will follow a framework which scholars have used to consider such jurisdiction or remedy-restrictive legislation. (L. Sager, "Constitutional Limitations on Congress' Authority to Regulate the Jurisdiction of the Federal Courts," 95 Harv. L. Rev. 17 (1981)). First, I will consider how such a restriction attacks the most basic framework of judicial authority; second, I will discuss some of the unconstitutional ends such a restriction would achieve. There are three essential elements of federal judicial authority which such a restriction would upset; they are, the ability of the federal courts to review state conduct, the ability of federal courts to review federal executive and legislative conduct, and finally, the need for judicial independence of the other branches of government.

A. Review of State Conduct.

While the Supreme Court has occasionally allowed Congress to tamper with its own jurisdiction, it has, since its famous decision in Martin v. Hunter's Lesee, 14 U.S. (1 Wheat) 304 (1816), been unwavering in its insistence on its authority to review state court actions. It was of this authority that Justice Oliver Wendell Holmes stated: "I do not think the United States would come to an end if we lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several states." (O.W. Holmes, Collected Legal Papers, 295-96 (1920). This power dates back to the nation's earliest legislation, the Judiciary Act of 1789, with its essential Section 25 provision for Supreme Court review of state court decisions on constitutional matters.

Consider how a restriction on the use of a comparable worth study interacts with such a history of federal review of state action. Surely the proposed restriction would only -- indeed, could only -- reach the federal courts. Consequently, state courts would be largely left to use the study as allowed or disallowed by state restrictions. Furthermore, because the federal courts' power to hear constitutional and discrimination cases is _not_ an exclusive one, a litigant seeking to gain the benefit of the study would be free to commence his/her suit in a state court and invoke the study as evidence as allowed by state law.

Let us assume that such a series of events comes to pass; that is, the state courts of State X make a ruling about federal constitutional rights to "comparable pay" based on the study which S. 519 orders. Appeal is then taken to the Supreme Court. What is the nation's highest tribunal to do? Close its eyes to the record of the state court, basing its decision on _different_ facts than the state court weighed? This course, not only doubtful, is presumably unconstitutional as it undoes the nature of the Court's role as an appellate tribunal, and reshapes it as a court of original jurisdiction in the suit -- an outcome barred by the famous ruling of _Marbury v. Madison_, 5U.S. (1 Cranch) 137 (1813) . Would the Court, alternatively, deem that it lacks the power to review the state court ruling? As such a ruling would overturn 170 years of consistent, powerful, and unfailing decisions to the contrary, it seems unlikely. The Court's only recourse would be to draw on its traditional Section 25 power to review state court opinions, and ignore or circumvent the Congressionally imposed limitation on the study's use. This is in fact the outcome which seems inevitable.

B. Review of Federal Executive/Legislative Conduct.

Leave aside the question of state conduct for a moment, and return to the exclusively federal sphere. Assume that the study is done and the results are in; subsequently, one or more employees of the federal government bring a suit alleging discrimination and rely on the study as evidence. Alternatively, a federal agency or the Office of Personnel Management (OPM) might want to rely on the study as evidence. I set aside the question of what deprivation of their rights is effected by a study limitation, which is discussed later herein. For now, consider with me what the likely Court response will be when faced by constitutionally questionable executive or legislative conduct.

A suit may raise several issues of constitutional import. As appropriations are involved, the constitutionality of legislative enactments is at stake; executive actions are likely to be challenged as well. Now assume again that the study is key, or possibly dispositive, to these constitutional claims. Will the Supreme Court abdicate two centuries of a tradition of judicial review -- scrutiny as to the constitutionality of executive or legislative actions -- because the Congress has attempted to place this study out of its grasp? Put another way, the question is this: will the government be allowed by the Court to defend its policies from constitutional attack by placing the very means to make such an attack beyond the reach of a litigant posing such a challenge? Or will the Government be precluded from defending based on the study results? It seems unlikely, just as the Court has refused to allow Congress to close off the courts themselves to such challenges. Just as the Court in Klein v. United States, 80 U.S. (13 Wall.) 128 (1872) or Battaglia v. General Motors, 169 F.2d 254 (2d Cir. 1948), refused to allow the Congress to remove the ability to hear constitutional claims from federal courts, it is unlikely that the Court would allow Congress to immunize the federal government from attack by removing certain information from the federal court system.

C. Preserving Judicial Independence.

1. Assailing the Basic Framework of Judicial Authority

The final way in which a restriction on the use of a study endangers the basic framework of our judicial system is by the way in which it assails judicial independence. The Framers established the Article III courts and their judges with certain protections: life tenure, minimum salaries, specified appointments process. This choice was not happenstance; those who drafted our Constitution had experienced the bitter results of a dependent judiciary under the British monarchy and desired to create a system of judges who would only have to answer to their own consciences. For such a system to have meaning, most constitutional scholars have concluded that certain corollaries to the Article III protections must follow. Thus, while Congress has been allowed to direct some Article III business to non-Article III courts (like administrative law judges), there must be some limits, or, as Professor Sager has suggested "the Article III tenure and salary requirements would be meaningless." 95 Harv. L. Rev. at 62. The recent problems Congress faced with the bankruptcy judges and Article III are also instructive.

The conditions under which such a transfer of authority away from Article III courts is allowed have been clearly delineated by the Supreme Court. First among these is the ability of those who are disgruntled with a finding to obtain review of the matter in question in an Article III court. The restriction on the use of a comparable worth study flies in the face of such a guarantee: the study might end up being usable in certain administrative proceedings at the Equal Employment

Opportunity Commission (EEOC) or the Office of Personnel Management, and then such proceedings would not be subsequently reviewable by an Article III court.

Even if this contingency is provided for, by limiting the use of the study outside the Article III courts, the point remains the same: Congress will have violated the independence of the judiciary by undercutting its ability to hear a judicial matter. Aside from the direct issue of Congressional mandate of a judicial outcome (discussed below), the principle of separation of powers -- of an independent judiciary with final review of the matters which may come before it -- is directly challenged by a restriction on the judicial admissibility of a study. As such, it is probably unconstitutional, or at the least, strongly inadvisable as a matter of constitutional tradition or history.

2. Achieving Unconstitutional Ends

Up to this point, I have focused on the largely institutional concerns which argue that a restriction on the use of a study in the courts is unconstitutional. I now move on to consider the way in which such a restriction, as it would operate in the courts, would achieve unconstitutional ends.

a. Deprivation of Due Process.

Due process of law -- as provided in the 5th and 14th Amendments to the Constitution -- is recognized as a pillar of modern protection of individual constitutional rights. If the Congress denies to a litigant, seeking to vindicate the constitutional right of Equal Protection, a piece of evidence which helps substantiate or, in the case of the Government, disprove that claim, it seems likely that such an action strikes at the essence of Due Process. As one of the nation's most prestigious appellate courts -- the Second Circuit under Judge Augustus Hand -- put it 37 years ago, while Congress has the power to "give, withhold, and restrict the jurisdiction of courts" it cannot "so exercise that power so as to deprive any person of life, liberty or property without due process of law." Battaglia, 169 F.2d at 257. Restricting use of the comparable worth study does just what the Second Circuit said the Congress could not, within the bounds of our Constitution, do.

In fact, the Supreme Court itself has recognized that it is "an independent judgment upon the facts" which, along with an independent judgment on the law, is the essence of due process. St. Joseph Stockyards Co. v. United States, U.S. 38, 51-52 (1936). Or, as the Court put it in another case, Crowell v. Benson:

> In cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function. (emphasis added).

285 U.S. 22, 60 (1932). By closing off the availability of the comparable worth study to the courts, Congress would be denying the courts the right to make an "independent determination" of the facts behind a litigant's constitutional claim; instead, it in effect is substituting its judgments about the weight such claims will receive. By singling out one group of litigants, and excluding their constitutional claims from receiving the equal protection that those allegedly who are discriminated against on the basis of race, for example, and are able to use an EEOC report on their behalf, receive, Congress simultaneously abridges their Due Process and Equal Protection rights. Such a restriction is sure to be overturned by the courts, and thus, should be recognized here as invalid.

b. Congressional Mandate of Judicial Outcomes.

Aside from the institutional concern discussed above, the restriction raises a related problem of Congressional mandate of a judicial outcome. That Congress cannot -- directly or indirectly -- tell a court how to decide a case is so beyond substantial dispute that the Supreme Court, in Klein, 80 U.S. (13 Wall.) at 147, said that the "question seems to us to answer itself." It appears clearly unconstitutional to ask the courts to participate in an "adjudicatory ritual, the end result of which would be the preordained defeat of the rights of constitutional claimants," in one scholar's view, a view which has substantial support. 95 Harv. L. Rev. at 88.

Nonetheless, Congress has attempted to do something similar to what a restriction on the use of S. 519's study might accomplish--preordaining (or at least markedly tilting) a judicial outcome. Most recently, in Johnson v. Robison, 415 U.S. 361, 366 (1974), the Supreme Court recited cases spanning a century and a quarter in concluding that a statutory bar to judicial review of legislatively determined facts or classifications would "raise serious questions concerning the constitutionality" of the statute. It is important to realize that this is just what the S. 519 study restriction might accomplish: a very real possible tampering with the judicial process.

Can Congress fairly exclude facts from the courts without being said to influence the outcome of litigation of constitutional matters? It strikes me as a dubious proposition at best. And if Congress could do what some suggest it can here, why couldn't it do the same after study results are in? The fact that the Government today is one of the nation's largest sources of research data should raise serious concerns about limitation on the flow of such data without effecting judicial outcomes. And there is no principled difference between making such a determination at the outset of a study or at its conclusion. That is why I believe that courts would have to see a study restriction as an unconstitutional legislative dictate of a judicial outcome (like a Bill of Attainder), and thus unconstitutional on this ground.

c. Denying Constitutionally Required Remedies.

The final unconstitutional end which a study restriction would achieve is a denial of certain constitutional remedies which would otherwise be available. This is the approach taken by several of the jurisdiction limitation bills: denying to courts the use of injunctions to stop state laws limiting abortion, or, more commonly, denying to courts the use of busing to remedy school segregation. Of course, limiting a remedy which a court can offer a litigant can make the right to the hearing almost meaningless. It in effect denies the plaintiff his or her right to a judicial forum if one cynically makes the forum available, only to deny the sympathetic court the constitutional remedies it would offer the victorious party.

Presumably, most of the members of this Committee would accept such a proposition. But the question comes: how does exclusion of the study from evidence deny to plaintiffs their constitutional remedies? The answer is a complex one; but only because any comparable worth litigation which might follow such a study is likewise complex. While unlikely under present law, consider a court which has heard such a suit, sided with the plaintiffs, and now seeks to render relief. The data of the study is critical to assess which positions such relief should reach; what monetary damages should be assessed; how such relief should be fashioned in the context of the Civil Service system; what assumptions, goals, and targets will underpin any affirmative scheme for reform of job descriptions or pay levels. Denying to a court access to the study which will enable it, to the best extent possible, to shape such a comprehensive order, is denying to the plaintiffs seeking such an order the essence of what it is that has brought them to the court system. Thus, it unconstitutionally restricts what would be otherwise constitutionally available relief, and as such, would be struck down or ignored by the courts.

D. Conclusion.

Ultimately, every limit on the courts is reviewable by the courts themselves. It is not enough to say to a court, "You cannot consider this matter, this fact, this law -- we place it beyond your reach." Any such statement or statute is subject to judicial scrutiny, and, if unconstitutional, judicial invalidation.

The restriction on the judicial use of the S. 519 comparable worth study, as I hope I have demonstrated here, is such an unconstitutional limitation. I trust this Committee will see it as such, defeat calls for its adoption, and consider the merits of adoption of S. 519 -- with its full consequences -- absent such an untenable restriction.

THE RAMIFICATIONS OF S. 519 -- A RETURN OF THE FEDERAL GOVERNMENT TO THE DOCTRINE OF SEPARATE BUT EQUAL

Enactment of S. 519 would serve to alter the entire focus of federal discrimination law. Stated quite simply, Title VII and the other fair employment laws were enacted to ensure equality of opportunity in the employment setting (see, e.g., Griggs v. Duke Power Co., 401 U.S. 424, 429 (1971); it was never intended to guarantee equal results. (Spaulding v. University of Washington, 740 F.2d 846 (9th Cir.), cert. denied 105 S. Ct. 511 (1984). Notably lacking from the present consideration of this bill is any allegation that women have been denied equal opportunities to compete for the higher paying, predominantly male positions. There is no allegation that women have been forced into the predominantly female lower paying positions. There is absolutely no indication that women in predominantly female positions in the federal government are there for any other reason save individual choice.

Moreover, to advance their comparable worth theory, advocates ironically must resort to the very same practices they rightly castigate -- they rely on stereotyping and generalizations based on women as a group rather than focusing on the individual. Such an approach has been soundly discredited by the courts. (See, e.g., Los Angeles Department of Water and Power v. Manhart, 435 U.S. 702 (1978, noting that Title VII precludes treatment of individuals as simply components of a sexual, racial or religious class).

I would submit to this Committee the touchstone for determining if an employment practice is discriminatory is a simple one -- does the evidence demonstrate treatment of an individual in a manner which but for that individual's sex would be different (Manhart). Applying such a criteria in the instant case leads to the conclusion that there is a complete lack of sex discrimination in the federal wage setting practices.

When one scrutinizes the categories at issue -- i.e., predominantly female and predominantly male job classifications -- in light of such a test, there is no difference based on gender. It does not matter whether the individual holding a position in the predominantly female classification is a male or female -- both genders receive the same rate of compensation for the same job (assuming of course that both have the same seniority in the particular grade level). The same is equally true for the predominantly male job classifications. I would further suggest that it is precisely because comparable worth rests on broad generalizations which preclude "thoughtful scrutiny" of the individual (Manhart) that the courts have refused to accept it as a cognizable theory under Title VII. (See, e.g., Power v. Berry County, 539 F. Supp. 721, 726 (W.D. Mich. 1982).

Because an extended discussion of the comparable worth theory is beyond the scope of this testimony but clearly necessary for full consideration of S. 519, we would request that the National Legal Center for the Public Interest's monograph Judicial Wage Determination . . . A Volatile Spectre - Perspectives on Comparable Worth (Washington 1984) be lodged as a part of the testimony.

B. THE SOCIAL RAMIFICATIONS OF S. 519

The social ramifications of S. 519 are considerable. In the final analysis, by promoting comparable worth, the legislation would serve effectively to perpetuate the job segregation in the federal government which its proponents have so forcefully denounced. Many commentators have pointed out that a sizeable segment of the female population prefer jobs that are low-risk, involve regular hours and are situated in a "clean" environment (see, e.g., Nelson, Opton and Wilson, Wage Discrimination and the "Comparable Worth" Theory in Perspective, 13 U. Mich. J.L. Ref. 223 (1980)). Thus comparable worth, if adopted, would permit women to pick and choose among the pleasant or clean jobs while being assured of earning wages equal to those provided for the highly undesirable and risky, allegedly overall "comparable" positions. There would be no incentive for a female to integrate into male-dominated occupations such as the construction trades and truck driving. Moreover, women who have ventured into such occupations solely for increased wages would have a disincentive for staying in such jobs. Adoption of a comparable worth approach in the federal government not only would preserve job segregation but, in fact, would serve to promote it.

As the Supreme Court recognized in Brown v. Board of Education of Topeka, Shawnee County, Kansas, 347 U.S. 483, 495 (1954) there is no place in American society for the doctrine of "separate but equal" because separate can never be truly equal. However, adoption of comparable worth would return us to this status. It is therefore clear that this Committee and the Congress must make a fundamental choice in dealing not only specifically with S. 519 but with the comparable worth issue in general. The Congress can seek to ensure the promotion of equal opportunity for all individuals based on their qualifications -- the goal set by Congress some twenty years ago when it enacted the Equal Pay Act and Title VII. Or Congress can repudiate such actions, along with the decisions of the Supreme

Court in this area, and return the nation to a system of separate but equal -- a system repugnant to the fundamental ideals of American society.

BIOGRAPHICAL SKETCH

FRANK C. MORRIS, JR.

Frank Morris is a native of Pittsburgh, Pennsylvania. He attended Northwestern University, receiving a Bachelor of Science Degree with Distinction in 1970 in Communication Studies, with an additional major in Political Science. He next received a Juris Doctor Degree from the University of Virginia Law School in 1973, where he was awarded the Earle M. Shawe Award for distinguished work in labor law. While at the University of Virginia, he served as Assistant Director of Forensics.

Mr. Morris joined the National Labor Relations Board in Washington, D.C. as an attorney in the Division of Enforcement Litigation, Appellate Court Branch, and handled cases in all eleven of the United States Courts of Appeals, as well as various United States District Courts throughout the country. He also served a special litgation assignment in the NLRB's Chicago Regional Office. While with the NLRB, he was responsible for substantial litigation under the amended Freedom of Information Act. During his NLRB service, he was twice awarded Superior Performance Awards by the NLRB General Counsel.

Following his service with the NLRB, Mr. Morris entered private practice in Washington, D.C., representing public and private employers in labor, EEO and general litigation matters. He also served as counsel for an employer's group, the Equal Employment Advisory Council, in various Supreme Court and Court of Appeals cases raising major issues under Title VII, the Age Discrimination in Employment Act, Executive Order 11246, the National Labor Relations Act, the Freedom of Information Act and the Privacy Act.

He has authored various publications, including the book Current Trends in the Use (and Misuse) of Statistics in Employment Discrimination Litigation (Equal Employment Advisory Council, 2d Ed. 1979), as well as articles on equal employment and labor topics for various journals including EEO Today, Employee Relations Law Journal and The Developing Labor Law. He served as labor relations columnist for the International Personnel Management Association News. In January, 1981, he was named editor-in-chief of the biweekly newsletter, The Equal Employer.

Mr. Morris engages in considerable teaching activities. He is an adjunct professor of law at the George Washington Law School where he teaches Equal Employment Opportunity Law and Employment Claims and Litigation. He has also been an adjunct professor at the Catholic University of America Law School. He is a faculty member of the Cornell University of New York State School of Industrial and Labor Relations EEO Studies Program, as well as a frequent lecturer on equal employment, affirmative action, and labor relations topics for various associations, business, educational, and other groups.

He is now a partner in the law firm of Epstein Becker Borsody & Green, P.C., which has offices in Washington, D.C., Alexandria, Virginia, New York City, Dallas-Ft. Worth, Tallahassee, Los Angeles, and San Francisco. Mr. Morris is actively engaged in the practice of Equal Employment, Labor, and Information Access and Privacy Law on behalf of both public and private sector management and conducts negotiations, handles arbitrations, advises on personnel and employee benefit issues and litigates these and general corporate matters in the state and federal courts. He is a member of the American Bar Association Sections of Litigation and Labor and Employment Law, the District of Columbia Bar Committees on Litigation and Labor Relations, and the Federal Bar Association Committees on Labor Relations, Equal Employment, and Government Information and Privacy.

Recently, Mr. Morris was selected as one of the Outstanding Young Men of America for 1982 and for Who's Who in American Law, Fourth Edition (1985).

Senator **Stevens**. Next we will hear from Barbara Hutchinson, director of the Women's Department, American Federation of Government Employees, AFL–CIO; Tricia Thomas, legislative director, National Federation of Federal Employees; and Paul Newton, director of legislation, National Treasury Employees Union.

Now, we should decide how to move and what order you wish to proceed in.

Unless you have got some objection, we will proceed in the order I read the witnesses. Is that all right?

Ms. **Hutchinson**. Fine.

Senator **Stevens**. May we assume that each one of you could use 5 to 7 minutes and then we might have some questions? Would that be agreeable?

Mr. **Newton**. That is fine, Senator.

Ms. **Hutchinson**. Yes, Senator.

Senator **Stevens**. Thank you very much.

Ms. Hutchinson.

TESTIMONY OF BARBARA B. HUTCHINSON, DIRECTOR, WOMEN'S DEPARTMENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO; TRICIA THOMAS, LEGISLATIVE DIRECTOR, NATIONAL FEDERATION OF FEDERAL EMPLOYEES; AND PAUL NEWTON, DIRECTOR OF LEGISLATION, NATIONAL TREASURY EMPLOYEES UNION

Ms. **Hutchinson**. Thank you, Senator Stevens and Senator Gore.

I am Barbara B. Hutchinson, the director of the women's department for the American Federation of Government Employees and also a vice president of the AFL–CIO. I am pleased to appear before you today in both capacities to testify on the issue of pay equity in the Federal service.

AFGE has taken a leading role in the representation of women and minorities in Federal employment. Our union has a women's department and a fair practices department. We have equal employment specialists on staff and 30 part-time elected representatives nationwide who focus on the problems of women and minorities.

It is our hope that these hearings will illuminate the seriousness of this issue to the public and avoid the hysteria on this issue which has emanated from some parts of the business community and segments of this administration.

Conservative economic theory holds dear to its heart the principle of simple supply and demand analysis of wage determination. In reality, labor markets are not nearly so cut and dried. Labor markets are a mixture of supply and demand, bargaining power, expectations of career commitments, historical understanding of fair wages, social valuation of relative wages, and individual prejudices. As a result, there are numerous opportunities for discriminatory wage setting practices to become established and ingrained in any pay system.

The body of research on the pay-equity issue provides compelling evidence that sex-based wage discrimination exists on a massive scale in labor markets. The fact that women earn only 58.7 percent of male earnings provides a strong prima facie case for the existence of such discrimination. Even the critics of pay equity using every variable in a human capital analysis have concluded that 50 percent of the pay gap between men and women remains unexplained.

The Federal Government has the responsibility to set the pace in achieving pay equity. This directly conflicts with the current pay and classification system which seemingly transfers the discriminatory practices of the private sector into the Federal sector. Actually, the historical record shows that the Federal Government has done more than simply reflect private sector discriminatory practices. The Federal Government was, in large part, responsible for the origin of sex-based discrimination. In particular, we refer this committee to the March 28, 1985, testimony of Professor Desang, chair of the Task Force on Comparable Worth of Wisconsin, who, before the House Post Office and Civil Service Subcommittee on Compensation and Employee Benefits, outlined the intentional practice by the Federal Government of feminizing the positions of clerk and librarian and, subsequently, underpaying those positions as they became "female" jobs.

We now must demonstrate the political will to do what is right and eliminate past wrongs. We believe that this commitment, accompanied by common sense and good faith, to eliminate unexplained wage differences between male dominated jobs and female dominated jobs is infinitely important. The various technical issues of measurement and implementation cannot be perfectly solved, but this cannot and should not be used as an excuse to do nothing. With this caveat, let me turn to some of the technical issues of the GAO report.

We are not fully convinced that an economic analysis is necessary to achieve an acceptable solution to eliminating patterns of wage discrimination. However, if the committee feels such analysis would help achieve a political consensus to address the problem we certainly would not oppose incorporating such an approach in the study.

The job content analysis should be the heart of the pay equity study. The concept of pay equity is simple; jobs should be paid according to their relative value. It is the object of job content analysis to establish the relative weighting of the jobs being surveyed. In eliminating pay inequities based on whether jobs are held by women, it is the job, not the individual, which must be the prime subject of the study.

We agree that focusing on both the General Schedule and the Federal Wage System is appropriate for this initial study. It will allow the study to be broad based but still manageable.

Turning to S. 519, sponsored by Senators Daniel Evans and Alan Cranston, we believe that this bill would successfully begin the process of effectively addressing the issue of sex-based wage discrimination in the Federal sector.

As with many difficult issues, information—both thorough and impartial—is paramount in defining the nature and scope of the pay equity issue in the Federal sector. This bill simply provides for a study to produce the requisite information. Many difficult decisions may or may not flow from the results of the study, but a decision not to move forward with this legislation would willfully keep Congress and the public in a state of ignorance.

We also strongly applaud the bill's provisions for the establishment of a commission on compensation equity, which would have broad-based political representation, as well as participation of employee representatives.

We want to take this opportunity to commend Senator Evans and Senator Cranston for their leadership on this issue as well as the other Members of Congress who have understood the importance of pay equity. We also want to recognize the General Accounting Office for producing a superb, balanced overview of the pay equity issue for the Federal sector.

Finally, we would like to note that the pay equity issue has risen to the forefront of public debate largely through the efforts of our brothers and sisters in the trade union movement. We would further like to note that there already is a solution to sex-based wage discrimination in the Federal sector. Studies have shown that both the Tennessee Valley Authority and the Postal Service have virtually eliminated the pay gap between men and women. The solution used in these agencies is collective bargaining. This solution should be extended to all agencies and their employees in the Federal sector.

We hope this committee will begin to lay the groundwork for the difficult process which will follow this study; namely, implementing the results and abolishing any current inequities which are found to exist.

Thank you very much.

Senator STEVENS. Thank you.

Ms. Thomas.

Ms. THOMAS. Mr. Chairman and Senator Gore, I appreciate this opportunity to appear today to discuss the issue of pay equity and options for conducting a pay equity study. If I may, I would like to submit our statement in full and summarize, and also submit a statement from NFFE's Women's Coalition.

Senator STEVENS. We will do that.

Ms. THOMAS. Last year, Congress commissioned the General Accounting Office to recommend methods of conducting a pay equity study to identify wage discrimination in the Federal work force. This report was completed in March.

The GAO study served an additional function. It raised the discussion of wage inequity to a new level in the Federal sector by showing there is a quantifiable problem. The study points out that despite the inequitable displacement of male and female workers in the total work force, women are paid, on the average, $11,000 less than their male counterparts. Furthermore, women are more concentrated in a small number of low paying occupations at a lower grade level.

Within the General Schedule series, the majority of women fall in grades 1 through 6, while most men tend to hold jobs in grades 9 through 15. Other recent GAO studies have shown not only are women being directed to predominantly female job categories, they have also not been given enough opportunity to advance within these categories. This trend is paralleled among our own membership. Most of our female members are employed in traditionally female positions such as clerk-typist, secretary, librarian, teacher or nurse.

These women also are more likely than men to fall into lower graded positions. Frankly, none of these women are paid in accordance with the skills, complexity, and demand required by their jobs.

Although the Federal Government has tried in the past to update its evaluation system, it has failed to make the necessary reforms to correct wage discrimination.

Pay equity does not exist in the Federal work force. While limited remedies are available to combat wage inequity or extermination once they have occurred, the root of the problem remains unchanged.

In spite of the equal pay provision in title V, the structure of pay and classification standards precludes pay equity. Jobs held primarily by women are undervalued and low paying. A thorough review of the wage-setting system to identify discriminatory practices is essential. If the Federal Government is to successfully eliminate sex-biased evaluations, these biases must be first identified and measured.

The GAO study has taken a first step by proposing two methods of analyzing wage disparity through economic analysis and through job content study. Since both options have their merits and drawbacks, any future study should utilize a combination of both approaches. However, study to measure the actual worth of the problem is especially important to the pay study. In fact, the pay equity study of the Federal wage system would not be complete without a job evaluation analysis.

Before a study of the Federal pay-setting process is undertaken, considerable planning will be needed to set priorities and establish guidelines. This cannot be done without the active participation of employees and their representatives.

We therefore find merit in the GAO's recommendation that a steering committee be formed to set objectives and to determine tactics.

This guidance will be crucial to direct the technical experts who would conduct the study. However, every effort should be made toward independence and impartiality. If the committee pay equity study is to be credible, it must be viewed as having no biases against the very important concept of comparable worth. Therefore, serious consideration will have to be given to the extent of participation in the study by the Office of Personnel Management.

With the GAO study in hand, Congress once again has the opportunity to begin a process which is already being practiced in the private sector. There is no reason, then, why the Federal Government should pay cash out in the area of pay equity. We therefore commend your efforts to resolving this problem and look forward to working with you.

Thank you for the opportunity to make this statement.

Senator STEVENS. Thank you very much.

Paul, it is nice to see you again.

Mr. NEWTON. Thank you, Mr. Chairman.

I am pleased to be here today to testify on behalf of the NTEU. As the exclusive representative of 110,000 employees in the Federal

Government, our union is committed to the fundamental principle of pay equity. I, too, would like to excerpt from our statement we have submitted for the record in the interest of time this morning and relate our comments directly to the GAO study, the purpose for this hearing.

The GAO report provides compelling documentation of the wage gap in the Federal sector. The grim statistics cited in the GAO report show that women in the Federal work force suffer from depressed wages and extensive job segregation. Federally employed women in the General Schedule and the Federal Wage System earn only 63 cents for each dollar earned by a man. The average salary for women in the two pay systems is $18,810, compared to $27,720 earned by men. Moreover, 55 percent of the women are concentrated in just 77 of the 885 occupational series in the General Schedule and Federal Wage systems and they are largely confined to the lowest grades in each occupational series. Women make up 76 percent of the work force in grades 1 through 6, but only 24 percent in grades 10 through 13 and 11 percent in grades 13 through 15.

We cannot allow this disparity in the earnings of male and female Federal workers to continue unaddressed. The Federal classification system must be thoroughly analyzed for sex bias, and discriminatory aspects of the system must be eliminated. The time is long past due for the Federal Government to fulfill its responsibility to provide fair pay without regard to sex.

Turning to the recommendations contained in the GAO report on their options for a pay equity study, we recommend that a job content analysis be the central feature of the study. This method involves the development of a job evaluation system which uses objective criteria to assess the value of occupations. The job content analysis is the only approach which allows a reasonably objective assessment of the proper weight or "value" of job characteristics, so that pay inequities can be identified and corrected. A job content study is particularly appropriate because the Federal Government already uses a job evaluation approach to setting pay. The study would simply detect any significant undervaluation of a particular job or skill which is built into the Federal classification system.

An economic analysis to identify nondiscriminatory factors contributing to the wage gap is not essential, but it is probably desirable. Previous studies of the Federal work force have found that white men earn 22 to 27 percent more than all women after "human capital" factors,such as education or experience, are taken into account. In general, economic studies of worker characteristics and other economic factors have been able to account for no more than 50 percent of the wage gap. While further economic analysis is likely to produce similar results, the analysis will help to underscore the extent of the pay equity problem and generate a broader base of support for the study.

We are concerned, however, about the length of time which will be required to conduct an economic analysis and a job content study of the Federal Pay Systems. If an economic analysis is incorporated in the Federal study, we recommend that the analysis be conducted concurrently with the job content study, to avoid a lengthy delay in correcting sex-based wage discrimination in the Federal Government.

The study should be guided, as GAO suggests, by a bipartisan steering committee composed of representatives of Congress, Federal employee unions, women's organizations and the Federal Government, assisted by a group of technical experts. A steering committee which encompasses a broad range of perspectives and concerns will be able to make reasonably fair and objective decisions concerning the goals of the study, the evaluation of jobs and skills, and recommendations for corrective action. This approach will also help ensure that the results of this study are credible and acceptable to Federal employees and managers.

The design and interpretation of a pay equity study necessarily involves policy decisions which affect the results of the study. If responsibility for selection of the consultant and oversight of the study if assigned to an agency which appears to be biased, such as VPM, the results of the study will be highly suspect. To avoid this problem, the steering committee should be given the authority to select a consultant and to direct and interpret the study, and OPM should be represented on the steering committee.

Before closing, there is one other observation we would like to make. In the private sector, women workers represented by unions have won better pay and employment opportunities through collective bargaining. Collective bargaining has enabled women in the U.S. Postal Service to achieve pay comparability, as well. This critical avenue for women to upgrade their jobs and gain better wages is foreclosed in most of the Federal Govermment, because all Federal unions do not have the right to negotiate over wages and job classification. By extending to all Federal unions the right to bargain over pay and classification, Congress will remove a major obstacle to attaining pay equity.

We are pleased that Congress has taken the initiative in achieving pay equity in the Federal Government, and we commend you, Senator Stevens and the subcommittee, for conducting hearings on this issue.

The Federal Government should be in the forefront of the struggle to end sex-based wage discrimination. By eliminating sex bias in Federal pay and classification systems, Congress can set an example for employers in the private sector to follow.

Thank you, Senator. I would be happy to answer any questions you may have.

Senator Stevens. I don't have any questions. I appreciate your appearance and your statements.

I hope that you will be willing to work with us as we do go through a markup of this bill. I think it has a considerable amount of support.

On the other hand, there are some obvious difficulties in the legislative process of getting to where we want to get to achieve the goal that we have all described. I look forward to working with you.

Senator Gore.

Senator Gore. I have a few brief questions, Mr. Chairman.

Do any of you have a view on whether or not the proposed study, should be limited as an initial matter to one or several agencies, or should it take on the entire Federal Government?

Ms. **Thomas**. I think, speaking for the National Federation of Federal Employees, I think we would like to see this as broad based as possible. We would not want it to go between just two agencies. I think between the three of us, we represent most Federal employees. I think to fully identify the problem, I think it is important to have it as broad based as possible.

Ms. **Hutchinson**. Our feeling about this is the same as NFFE's feeling. Due to the fact that the job classification system for the Federal Government is set up under a broad based system so that we try to narrowly focus on one or two agencies, I don't think that would get an appropriate view of what the problem really is. I think you do have to have some kind of a broad based approach. In our testimony, we did state that we thought that the definition of employer should be Federal Government and not necessarily agency.

Mr. **Newton**. We are united on that, Senator, and agree that it ought to be broad based and the fact that the Government is considered as an employer and not as separate agencies.

Senator **Gore**. Do you have any estimates of the amount of time such a study should or would likely take?

Mr. **Newton**. We are hesitating in answering in terms of timeframe.

Go ahead.

Ms. **Hutchinson**. I think due to the fact that if you set up this commission and the commission then gets and sets a range for the study, you will then have a time limit, although I believe there is a provision in the bill that says they will return some type of a report in 2 years. We are not always, at least I cannot claim to be the expert on how long one of these studies would take. I think that the set-up of the commission will have that kind of expertise and that there is a mechanism for someone to report back.

Senator **Gore**. Very good.

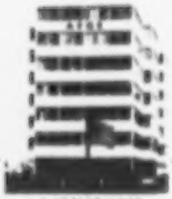
I would like to thank all of you for your participation here today. I certainly do appreciate it. Thank you very much.

Mr. **Newton**. Thank you, Senator.

Ms. **Thomas**. Thank you.

Ms. **Hutchinson**. Thank you, sir.

[The prepared statements of the AFGE, NFFE, and the NTEU follow:]



AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES
AFFILIATED WITH THE AFL-CIO

KENNETH T. BLAYLOCK
NATIONAL PRESIDENT

JOHN N. STURDIVANT
EXECUTIVE VICE PRESIDENT

NICHOLAS J. NOLAN
NATIONAL SEC.-TREAS.

1325 MASSACHUSETTS AVE., N.W. WASHINGTON, D.C. 20005
Telephone: (202) 737-8700

STATEMENT BY

BARBARA B. HUTCHINSON
DIRECTOR OF THE WOMEN'S DEPARTMENT
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
(AFL-CIO)

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE, AND GENERAL SERVICES
GOVERNMENT AFFAIRS COMMITTEE
UNITED STATES SENATE

ON

PAY EQUITY

JULY 24, 1985

I am Barbara B. Hutchinson, Director of the Women's Department for the American Federation of Government Employees (AFL-CIO). I am also a Vice-President of the AFL-CIO and I am pleased to appear before you today in both capacities, and testify on the issue of pay equity in the Federal service.

AFGE has taken a leading role in the representation of women and minorities in Federal employment. Our union has a Women's Department and a Fair Practices Department. We have Equal Employment Specialists on staff and thirty part-time elected representatives nationwide who focus on the problems of women and minorities.

It is our hope that these hearings will illuminate the seriousness of this issue to the public and avoid the hysteria on this issue which has emanated from some parts of the business community and segments of this Administration.

Conservative economic theory holds dear to its heart the principle of simple supply and demand analysis of wage determination. In reality, labor markets are not nearly so cut and dried. Labor markets are a mixture of supply and demand, bargaining power, expectations of career commitments, historical understanding of "fair" wages, social valuation of relative wages, and individual prejudices. As a result, there are numerous opportunities for discriminatory wage setting practices to become established and ingrained in any pay system.

The body of research on the pay equity issue provides compelling evidence that sex-based wage discrimination exists on a massive scale in labor markets. The fact that women earn only 58.7% of male earnings provides a strong prima facie case for the existence of such discrimination. Even the critics of pay equity using every variable in a human capital analysis have concluded that 50% of the pay gap between men and women remains unexplained.

The massive increase of women in the labor force over the past two decades (women employment increased 95% from 1960 to 1980 compared to a 31% increase in male employment) has made the continuation of such sex-based wage discrimination untenable.

The Federal government has the responsibility to set the pace in achieving pay equity. This directly conflicts with the current pay and classification system which seemingly transfers the discriminatory practices of the private sector into the Federal sector. Actually the historical record shows that the Federal government has done more than simply reflect private sector discriminatory practices. The Federal government was, in large part, responsible for the origin of sex-based discrimination. In particular, we refer this Committee to the March 28, 1985, testimony of Professor Desang, Chair of the Task Force on Comparable Worth of Wisconsin, who before the House Post Office and Civil Service Subcommittee on Compensation and Employee Benefits outlined the intentional practice by the Federal government of feminizing the positions of clerk and librarian and, subsequently, underpaying those positions as they became "female jobs".

We now must demonstrate the political will to do what is right and eliminate past wrongs. We believe that this commitment, accompanied by common sense and good faith, to eliminate unexplained wage differences between male dominated jobs and female dominated jobs is infinitely important. The various technical issues of measurement and implementation cannot be perfectly solved but this cannot and should not be used as an excuse to do nothing. With this caveat let me turn to some of the technical issues of the GAO report.

We are not fully convinced that an economic analysis is necessary to achieve an acceptable solution to eliminating patterns of wage discrimination. However, if the Committee feels such analysis would help achieve a political consensus to address the problem we certainly would not oppose incorporating such an approach in the study.

The job content analysis should be the heart of the pay equity study. The concept of pay equity is simple; jobs should be paid according to their relative value. It is the object of job content analysis to establish the relative weighting of the jobs being surveyed. In eliminating pay inequities based on whether jobs are held by women, it is the job, not the individual, which must be the prime subject of the study.

We agree that focusing on both the General Schedule and the Federal Wage System is appropriate for this initial study. It will allow the study to be broad based but still manageable.

As to the question of the appropriate definition of employer -- each agency or the Federal government -- we think that the agency definition would unduly complicate the study without substantially helping address the issue at hand.

We strongly support the concept of a broad based steering committee to be responsible for all policy decisions, aided by a group of technical experts. Such a steering committee could help in developing the direction of the study -- and its resulting recommendations.

Turning to S. 519, sponsored by Senator Daniel Evans (R-WA) and Alan Cranston (D-CA), we believe that this bill would successfully begin the process of effectively addressing the issue of sex-based wage discrimination in the Federal sector.

As with many difficult issues, information -- both thorough and impartial -- is paramount in defining the nature and scope of the pay equity issue in the Federal sector. This bill simply provides for a study to produce the requisite information. Many difficult decisions may or may not flow from the results of the study, but a decision not to move forward with this legislation would willfully keep Congress and the public in a state of ignorance.

We also strongly applaud the bill's provisions for the establishment of a Commission on Compensation Equity, which would have broad based political representation, as well as participation of employee representatives.

We want to take this opportunity to commend Senators Evans and Cranston for their leadership on this issue as well as the other Members of Congress who have understood the importance of pay equity. We also want to recognize the General Accounting Office for producing a superb, balanced overview of the pay equity issue for the Federal sector.

Finally, we would like to note that the pay equity issue has risen to the forefront of public debate largely through the efforts of our brothers and sisters in the trade union movement. We would further like to note that there already is a solution to sex-based wage discrimination in the Federal sector. Studies have shown that both the Tennessee Valley Authority and the Postal Service have virtually eliminated the pay gap between men and women. The solution used in these agencies is called collective bargaining. This solution should be extended to all agencies and their employees in the Federal sector.

We hope this Committee will begin to lay the groundwork for the difficult process which will follow this study; namely, implementing the study's results and abolishing any current inequities which are found to exist.

Thank you.

NATIONAL
FEDERATION
OF FEDERAL
EMPLOYEES

NFFE

2020 K St., NW
WASHINGTON, DC
20006
(202) 862-4400

SERVING FEDERAL EMPLOYEES AND THE NATION SINCE 1917

STATEMENT BY

THE NATIONAL FEDERATION OF FEDERAL EMPLOYEES

BEFORE

THE SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE,
AND GENERAL SERVICES

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

ON

OPTIONS FOR CONDUCTING A PAY EQUITY STUDY

July 24, 1985

Mr. Chairman and Subcommittee Members: I appreciate this opportunity to appear before the Subcommittee to discuss the issue of pay equity and the possible methods of conducting a pay equity study within the Federal workforce. The National Federation of Federal Employees has long recognized the inherent right of Federal employees to receive equal pay for work of equal or comparable value, and we will continue to strive toward its implementation. We therefore look forward to working with the Subcommittee to achieve this goal.

The battle to bring fair pay practices to the Federal workforce has been a long one. Three years ago, we called for a thorough review of the pay disparities encountered by Federally-employed women and minorities and we have continued our efforts since then. Last year, when the House overwhelmingly approved legislation requiring a comprehensive review of wage discrimination, Federal employees' morale soared as a large portion of the workforce anticipated the long overdue reform.

Yet, in spite of a bipartisan mandate to eliminate wage discrimination, the Senate delayed consideration of the bill. Instead of taking legislative action, Congress agreed to commission the General Accounting Office (GAO) to recommend methods for conducting a pay equity study to identify wage discrimination in the Federal workforce. This report was completed March 1st.

The GAO study serves an invaluable function. For a start, it has raised the discussion of wage inequity to a new level within the Federal sector by showing that there is a quantifiable problem. No longer can it be denied that Federally-employed women have been and continue to be concentrated in the lowe paid grades. The GAO study points out that, despite the almost equal distribution of male and female workers in the total workforce, women are paid on the average $11,365 less than their male counterparts. Furthermore, women are concentrated in a small number of low paying occupations at lower grade levels. Within the General Schedule (GS) series, the majority of women fall in grades one through six while most most men tend to hold jobs in grades nine through fifteen.

This job segregation and wage discrimination was noted in another recent report by the GAO ("Distribution of Male and Female Employees in Four Federal Classification Systems" November 27, 1984). The study showed that, within the General Schedule series, women are concentrated in the administrative, clerical and office services (252,443 out of 595,982 Federally-employed women). Seventy-three percent of the women in this series work in grades one through six and earn an average annual salary of $15,297. However, men employed in the same series generally fall under grades nine through fifteen and work in supervisory positions. So, not only are women being directed to predominantly female job categories, it also appears they have not been given enough opportunities to advance within these categories.

This trend is paralleled among our own membership. Most women in NFFE are employed in traditionally female positions, such as clerk-typist, secretary, librarian, teacher and nurse. These women also are more likely than men to fall into lower-graded positions. Frankly, none of these women is paid in accordance with the skills, complexity, and demands required by their jobs.

The November, 1984 GAO study shows that predominantly male jobs pay higher salaries than predominantly female jobs. For example, within the 1400 librarian series, women make up seventy percent of the workforce. However, they are concentrated in grades one through nine and earn an average annual salary of $15,705. Compared to the 2100 transportation series, in which seventy-five percent of the workforce is male, this salary is embarrasingly low. Men in this series are clustered in grades nine through fifteen and earn an average salary of $29,390.

The fact that women are paid less than men in both the private and public sector is indisputable although the reasons for the obvious pay disparity are controversial. At the heart of wage inequity seems to be the long-held attitude that women are the "weaker sex'. Therefore, female-dominated jobs are worth less than jobs held by men and should compensate the employee accordingly. Likewise, men have traditionally been perceived as the breadwinner and supporter of the family, thus requiring higher wages. This notion, perhaps above all misconceptions, is highly discriminatory and entirely inaccurate. Salaries should not be set on the basis of need. If this practice were followed, then men with larger families would be better paid than men with smaller or no families.

Employers in both the public and private sector need to stop thinking in these terms and instead concentrate more on the worth of their employees' work. The concept of pay equity or comparable worth was developed to do just that. Generally defined, pay equity is the idea that equal salaries should be paid for jobs that require comparable effort, skill and responsibility. More specifically, the concept advocates a bias-free evaluation system that uses objective criteria to assess any given occupation. Despite these objectives, pay equity has yet to be fully realized because of the failure to reach a consensus in judging "worth." Although job evaluation systems and classification standards have been developed by many large employers to assess worth, they have not always been equitably applied. The Federal government is just one example of how archaic standards are weighted against women.

Although the Federal government has tried in the past to update its evaluation system, it has failed to make the necessary reforms to correct wage discrimination. In 1975, a new Factor Evaluation System (FES) was designed to replace the old narrative system. The new plan is based on nine factors (knowledge required by the position, supervisory control, guidelines, complexity, scope and effect, personal contact, purpose of contacts, physical demands, and work environment). Each is assigned a specific range of points. The factors are subdivided into levels which determine the total points a job may receive based upon the position description. When the points are tallied, they are matched to a conversion table that determines the grade based on the total number of points.

The Office of Personnel Management claims that the FES is a bias-free, quantitive evaluation system even though it has continually failed to objectively assess the value or worth of most female-dominated jobs. The current system still relies on outmoded value judgements and standards. Because the standards used are not continuously revised, they frequently fail to account for the ability needed to use the developing technological resources essential in many professions (i.e., data processing knowledge and word processing skills). The factors applied to job descriptions also tend to be weighted against or fail to account for traditionally female skills because they do not recognize the value of such skills.

Pay equity does not exist in the Federal workforce. While limited remedies are available to combat wage inequity or discrimination once they have occurred, the root of the problem remains unchanged. In spite of the equal pay provision in Title V, the structure of pay and classification standards precludes pay equity. Biased societal values continue to appear in the grading system and sex-role stereotyping influences the process of assigning particular jobs. Thus, jobs held primarily by women are undervalued and low paying. To add insult to injury, the mechanics of the system (such as career progression) prevent upward mobility out of gender-dominated jobs.

A thorough review of the wage setting system to identify discriminatory practices is essential. If the Federal government is to successfully eliminate sex-biased job evaluations, these biases must first be identified and measured. The GAO study has taken the first step by proposing two methods of analyzing wage disparities: through economic analysis and through a job content study. Since both options have their merits and their drawbacks, any future pay study should utilize a combination of both approaches.

The economic analysis recommended by the GAO isolates variables that influence wage-setting and determines how they can affect wage discrepancies. Such a study would consider not only the 'human capital' (i.e. the employee's characteristics) but also the job requirements and the environment in which the work is performed. While valuable information could be provided through such an empirical analysis, the pay equity study would not be complete. According to the GAO's own report, similar studies have been able to explain only a part of the reason for wage disparities through this type of analysis.

Therefore, a study to measure the actual worth of a job is necessary to round out any pay survey. The GAO's proposed job content analysis would do just that. This approach considers the characteristics of an employee's position and places a value on the job he or she performs. The FES system is an example of a job evaluation system, however, it is an example of how not to conduct this type of analysis. As I noted earlier the FES has failed to eliminate the inherent biases of the former system and merely transferred them into the new factors. Thus, the weight or value given to each job skill did not change and the biases were perpetuated. But a more objectively designed job content analysis would certainly be helpful in identifying the subjective value assignments and to determine whether or not they have been partially responsible for the wage gap. In fact, a pay equity study of the Federal wage system would not be complete without a job evaluation analysis. We therefore believe that both an economic and job content review are needed in a fair and accurate pay equity study.

Before a study of the Federal pay setting process is undertaken, considerable planning will be needed to set priorities and establish guidelines. This cannot be done without the active participation of the employees and their representatives. We therefore find merit in the GAO's recommendation that a steering committee be formed to set objectives and determine tactics. This guidance will be crucial to direct the technical experts who would conduct the study. However, every effort should be made to ensure the independence and impartiality of the Committee. If the pay equity study is to be credible then it must be viewed as having no biases against the very concept of comparable worth. Therefore, serious consideration will have to be given to the extent of the Office of Personnel Management's participation in the committee and in the pay survey. We are familiar with the personnel agency's disruptive tactics in last year's legislative consideration of pay equity, so we hope that such disruption will not be permitted in any future study.

With the GAO study in hand, Congress once again has the opportunity to begin a process which is already being practiced in the private sector. There is no reason, then, why the Federal government should play catch-up in the area of pay equity. We therefore commend the Subcommittee for your efforts to resolve wage discrimination within the Federal workforce and look forward to working with you toward this goal.

That concludes my statement. I will be happy to answer any questions you may have.

NATIONAL
FEDERATION
OF FEDERAL
EMPLOYEES

NFFE

2020 K St., NW
WASHINGTON, DC
20006
(202) 862-4400

SERVING FEDERAL EMPLOYEES AND THE NATION SINCE 1917

STATEMENT BY

THE NATIONAL FEDERATION OF FEDERAL EMPLOYEES

WOMEN'S COALITION

BEFORE

THE SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE,
AND GENERAL SERVICES

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

ON

PAY EQUITY AND OPTIONS FOR CONDUCTING
A STUDY ON SEX-BASED WAGE DISCRIMINATION

July 24, 1985

Mr. Chairman and Subcommittee Members: The National Federation of Federal Employees represents over 150,000 civil servants, over half of whom are women and minorities who have been discriminated against by the Federal pay system. Because of our concern over the importance of pay equity among other issues, our members organized The NFFE Women's Coalition to address these concerns and work toward their remedy. We are therefore particularly interested in the topic of today's hearings and offer our views with the hope that they will aid you in your effort to correct pay discrimination.

There are an estimated 1.5 million General Schedule (GS) Federal employees. Of this number, most female workers are clustered in low-paying occupations, grades 1-7. Eighty three percent of Federal civilian employees are covered by either the GS or the Federal Wage System (FWS). The recent study completed by the General Accounting Office shows that 55 percent of all women employed in GS and FWS jobs are concentrated in 8 percent of the occupations contained in those series. The National Federation of Federal Employees asked their Women's Coalition, as we are part of the 1.5 million, to prepare a statement on pay equity.

It is difficult for us to understand why there is so much controversy on this issue. Testimony heard previously by this Subcommittee has listed how sex-bias has historically been built into the Federal government's pay system. We agree with Professor Dennis L. Dresang, Chair of the task force on Comparable Worth of the State of Wisconsin, who testified before this Subcommittee on

March 28, 1985. He stated:

> "The Federal government, as an employer, bears major responsibility for the discriminatory practices that continue to affect the wages of some female-dominated occupations. One such occupation is the clerical group."

Prior to preparing this testimony, several women who are members of the NFFE Women's Coalition were contacted. I would like to relay examples of Pay "inequity" which were uncovered. The first example comes from a woman who had a responsible job as a General Schedule secretary. Upon the break-up of her marriage she found she could not support herself and her two small children on her secretary's salary, so she was forced to seek a higher paying position. She left the traditional female-dominated position and accepted a higher-paying job as a Federal lock and dam operator, a male-dominated job, for the Corps of Engineers. And much to her suprise, she found that, despite the lower salary of her secretarial job, it was as demanding and stressful as her new job.

The second story is very similar. It concerns a young woman employed as a GS clerk-typist whose marriage also broke-up. She too left her female-dominated position and became a lineman. Her new position has given her an increase in salary and taken her out of the poverty level she was in while working as a GS clerk-typist. However, she found that her former position required more skill and knowledge and a higher level of responsibility that the lineman's position.

These are merely two examples of the glaring wage disparity which exists within the Federal workforce. Thus, it is inconceivable to us, the Federally employed women in traditionally female-dominated positions, that anyone in Congress or the Administration would be opposed to a study to determine if wages in the Federal Government are sex-biased.

The Equal Pay Act of 1963 required employers to pay the same wage to all employees performing the same work. Pay equity takes this one step further. It means that an employer cannot discriminate on the basis of sex or race when it sets and pays wages for different as well as similar occupation. Evidence of a discriminatory wage practice may include an employer paying jobs held predominantly by women less than comparable jobs held by men. This is certainly the case in the Federal government.

What opponents of pay equity seem to disregard is the fact that women no longer work for "pin money" but out of economic need. The number of single women who maintain families has risen 70 percent in the last decade and their wages are crucial to support their families. To make matters worse, the economic consequences of discriminatory pay also follow women into old age. Statistics show that twice as many women as men over the age of 65 live in poverty.

Together with older women living alone, they comprise over 50 percent of all households receiving food stamps. So we see that the American way of life has changed. A women can no longer depend on a man to support her for the rest of her life. She, by necessity, must be self-sufficient. But if the current wage system remains, she will be unable to support herself.

Recognizing the new burdens placed on women, public opinion is turning more and more toward pay equity practices. In a national survey released in February of this year, 69 percent of American employees believed women are not paid as fairly as men. Eighty- three percent of those polled said they believed the wage gap (defined as women earning roughly sixty cents for every dollar men earn) was a serious problem that we should correct. A majority of those surveyed believe that occupations dominated by women -- nursing, teaching, and clerical work -- are underpaid. In addition, 61 percent of those surveyed said they believed that if most nurses and secretaries were men, "the jobs would pay a lot better than they do." So it is not hard to understand why four out of five working Americans surveyed supported pay equity to solve this problem. Obviously, there is a great deal of national support for this concept.

Yet, Morris B. Abram, Vice-Chairman of the U.S. Civil Rights Commission flatly denounced it stating, "I do not believe the government should be in the business of setting wages. I want collective bargaining and the free market system to determine that." I would like to know if Mr. Abram is aware that the government currently engages in the practice which he denounces -- setting wages. I wonder too, if Mr. Abram is aware that Federal employee unions are prohibited by law from negotiating wages. We have no recourse, save legislation, to bring about changes in our pay.

It is a terrible thing that the Federal government would support the interests of those who profit from discrimination. Should not our Federal government be a leader in setting the example of fairness to all workers? Thirty-five states have already completed pay equity studies or are undertaking such reviews of their wage and classification systems. This Subcommittee has also patiently listened to numerous, well-qualified people as they testified in support of pay equity. Charts, graphs and a mind-boggling array of statistics have been presented to prove that women and minorities are not paid on a fair and equitible basis with men. What more is needed? The NFFE Women's Coalition feels that the Federal bureaucracy has been excruciatingly slow to progress.

We are also disillusioned by the denigrating and patronizing statements of Mr. Clarence Pendleton and Mr. Morris B. Abram, of the U.S. Commission on Civil Rights. Their assertions that comparable worth is merely "Looney Tunes" and that "women work less hours, have less seniority and work more intermittently" should be dismissed for what they are -- hogwash. Don't these gentlemen understand what we are talking about when we say "pay equity"? Apparently not. Since these gentlemen hold such influential positions, we ask them to listen to the majority, for that is what democracy demands. Pay equity is a serious issue which the majority supports. So we urge them and the Administration to act on this mandate by supporting pay equity within the Federal government.

Thank you for your attention to this issue.

NTEU
The National Treasury Employees Union

STATEMENT OF

ROBERT M. TOBIAS
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

TO THE

SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE
AND GENERAL SERVICES
COMMITTEE ON GOVERNMENTAL AFFAIRS

HONORABLE TED STEVENS
CHAIRMAN

OPTIONS FOR CONDUCTING A PAY EQUITY STUDY
OF FEDERAL PAY AND CLASSIFICATION SYSTEMS

UNITED STATES SENATE
WASHINGTON, D.C.

JULY 24, 1985

1730 K Street, N.W. • Suite 1101 • Washington, D.C. 20006 • (202) 785-4411

Thank you, Mr. Chairman:

I am pleased to be here today to testify on behalf of the National Treasury Employees Union. As the exclusive representative of 110,000 employees in the federal government, our union is committed to the fundamental principle of pay equity. Simply stated, pay equity, or comparable worth, as it is sometimes called, means that women should be paid the same as men for work that requires comparable educational preparation, experience, skill and responsibility. Pay equity requires that pay be based on the job performed, not on gender.

As increasing numbers of women in the United States enter the work force, pay equity is becoming an issue of paramount importance for working women. Today, women working full-time year-round earn only 60 percent as much as their male counterparts. The vast majority of women in the work force are working out of financial necessity, and the wage gap has had a devasting impact on the economic security of women and their families. One out of every three families maintained by a woman is poor, and as a result of low lifetime earnings, elderly women must often struggle to survive on meager pensions.

Women cannot and should not continue to bear the cost of discriminatory wage setting practices. Pay equity offers a solution to that problem.

The principle of pay equity simply requires that pay reflect the "worth" of a job to the employer. It is hardly a radical and dangerous "doctrine", as its opponents portray it. According to the General Accounting Office (GAO) 75 percent of large public and private sector organizations in the United States use a job evaluation procedure to assess the value of positions and set pay rates.

The federal position classification system uses just such a procedure, based on the premise that the duties and responsibilities of a job should determine pay levels. In the federal classification scheme, each position is evaluated using criteria such as skill, knowledge required and working conditions, and quantitative measures are used to determine the value, and corresponding pay, of the position.

However, the federal classification system is fundamentally flawed, because the factor evaluation system (FES) used to assign weights to various job tasks is based on classification standards that have been in existence since 1923. Consequently, the system reflects the sex bias concerning male and female job roles that permeated society 62 years ago. A thorough examination of the federal classification system for sex bias is long overdue.

The GAO Comptroller General report," Options for Conducting a Pay Equity Study of Federal Pay & Classification Systems", provides compelling documentation of the wage gap in the federal sector. The grim statistics cited in the GAO report show that women in the federal work force suffer from depressed wages and extensive job segregation. Federally employed women in the General Schedule (GS) and the Federal Wage System (FWS) earn only 63¢ for each dollar earned by a man. The average salary for women in the two pay systems is $18,810, compared to $27,720 earned by men. Moreover, 55 percent of the women are concentrated in just 77 of the 885 occupational series in the GS and FWS systems, and they are largely confined to the lowest grades in each occupational series. Women make up 76 percent of the work force in grades 1 through 6, but only 24 percent in grades 10 through 12 and 11 percent in grades 13 through 15.

We cannot allow this disparity in the earnings of male and female federal workers to continue unaddressed. The federal classification system must be thoroughly analyzed for sex bias, and discriminatory aspects of the system must be eliminated. The time is long past due for the federal government to fulfill its responsibility to provide fair pay without regard to sex.

I would like to turn now to the recommendations contained in the GAO report on options for a pay equity study. We recommend that a job content analysis be the central feature of the study. This method involves the development of a job evaluation system which uses objective criteria to assess the value of occupations. Job content analysis is the only approach which allows a reasonably objective assessment of the proper weight or "value" of job characteristics, so that pay inequities can be identified and corrected. A job content study is particularly appropriate because the federal government already uses a job evaluation approach to setting pay. The study would simply detect any significant undervaluation of a particular job or skill which is built into the federal classification system.

An economic analysis to identify nondiscriminatory factors contributing to the wage gap is not essential, but it is probably desirable. Previous studies of the federal work force have found that white men earn 22 to 27 percent more than all women after "human capital" factors, such as education or experience, are taken into account. In general, economic studies of worker characteristics and other economic factors have been able to account for no more than 50% of the wage gap. While further economic analysis is likely to produce similar results, the analysis will help to underscore the extent of the pay equity problem and generate a broader base of support for the study.

We are concerned, however, about the length of time which will be required to conduct an economic analysis and a job content study of the federal pay systems. If an economic analysis is incorporated in the federal study, we recommend that the analysis be conducted concurrently with the job content study, to avoid a lengthy delay in correcting sex based wage discrimination in the federal government.

The study should be guided, as GAO suggests, by a bipartisan steering committee composed of representatives of Congress, federal employee unions, women's organizations and the federal government, assisted by a group of technical experts. A steering committee which encompasses a broad range of perspectives and concerns will be able to make reasonably fair and objective decisions concerning the goals of the study, the evaluation of jobs and skills, and recommendations for corrective action. This approach will also help ensure that the result of the study are credible and acceptable to federal employees and managers. We would further recommend that job incumbents be involved in the job evaluation process, because job descriptions in the federal government are frequently dated and unreliable, and direct participation will improve employee understanding and support of the pay equity study.

The design and interpretation of a pay equity study necessarily involves policy decisions which affect the results of the study. If responsibility for selection of the consultant and oversight of the study is assigned to an agency which appears to be biased, such as OPM, the results of the study will be highly suspect. To avoid this problem, the steering committee should be given the authority to select a consultant and to direct and interpret the study, and OPM should be represented on the steering committee.

Before closing, there is one other observation we would like to make. In the private sector, women workers represented by unions have won better pay and employment opportunities through collective bargaining. Collective bargaining has enabled women in the U.S. Postal Service to achieve pay comparability as well. This critical avenue for women to upgrade their jobs and gain better wages is foreclosed in most of the federal government, because all federal unions do not have the right to negotiate over wages and job classification. By extending to all federal unions the right to bargain over pay and classification, Congress would remove a major obstacle to attaining pay equity.

We are pleased that Congress is taking the initiative in achieving pay equity in the federal government, and we commend you, Senator Stevens, for conducting hearings on this vital issue.

The federal government should be in the forefront of the struggle to end sex-base wage discrimination. By eliminating sex bias in federal pay and classification systems, Congress can set an example for employers in the private sector to follow.

Thank you, Mr. Chairman. I would be happy to answer any questions you might have.

CO/prw/0211L

Senator GORE [presiding]. Let's go ahead to the next panel. The chairman will be returning shortly. I would like to call Sharon Spigelmyer, director, human resources and equal opportunity for the National Association of Manufacturers, and Sally Douglas, manager of legislative research for the National Federation of Independent Business.

TESTIMONY OF SALLY DOUGLAS, MANAGER OF LEGISLATIVE RESEARCH, NATIONAL FEDERATION OF INDEPENDENT BUSINESS; AND SHARON SPIGELMYER, DIRECTOR, HUMAN RESOURCES AND EQUAL OPPORTUNITY, NATIONAL ASSOCIATION OF MANUFACTURERS

Senator GORE. Is Ms. Spigelmyer here?

Ms. Douglas, without objection, your prepared statement will be placed in the record. Ms. Spigelmyer has been detained on the House side. If she arrives in time, we will hear her statement. If not, we will insert it in the record.

Please proceed with your oral summary, Ms. Douglas.

Ms. DOUGLAS. Thank you, Senator Gore.

My name is Sally Douglas. I am here on behalf of more than 500,000 members of the National Federation of Independent Business. Our members are small, independently owned businesses across the country in all types of sectors, and as small businesses, the leading job generating sector, at least in the private sector for the past few years, they obviously have a vital interest in anything that would affect employment practices.

The subject of the hearing is the GAO study. Our statement predominantly concentrates on the bills before you with references to the GAO study. So I will cite particular parts out of that testimony.

The GAO study confirmed that there is a wage gap. The question, however, revolves around how much, if any, of the wage gap that presently exists between men and women is attributable to discrimination on the part of employers, in this case, as the Federal Government as an employer. Proponents of comparable worth believe that the gap is attributable to discrmination and therefore must be remedied, either through State or Federal legislation or through the courts, though there have recently been some attempts to resolve the issue through collective bargaining. As one of the previous witnesses stated, there have been some notable successes in that area.

The GAO study, on the other hand, says that it is not clear why the gap exists and whether discrimination plays a part. This is, we believe, an important factor for your determination as you determine what you are about to do. There are also many other factors, such as education, on-the-job experience and skills, seniority, continuity in the workplace, that account for discriminancy in wages.

These are referred to as human capital, and they are cited by the GAO report as proper tools for analyzing the wage gap, since all these human capital factors result in greater productivity and efficiency to the employer and therefore, higher wages for the employee.

There is also another study in 1981 by the National Academy of Sciences, which was entitled, "Women, Work and Wages." It was requested by the Equal Employment Opportunity Commission and their relationship of job evaluations and their relationship to comparable worth. We believe that the report stated clearly a couple of things that we would like you to take into consideration.

First of all, the concept of intrinsic job worth, whether it exists and what it should be based on, whether there is a just wage, has been a matter of dispute for many centuries. we do not believe, the report states, that the value or worth of jobs can be determined by scientific methods. Hierarchies of job worth are always, at least in part, a reflection of values.

Now, in this respect, S. 519 shares the same flaw as the House bill, H.R. 27. There is a presupposition in S. 519 that there currently exists standard objective job evaluation techniques that can be used to evaluate the comparable value of different jobs.

There are many job evaluation techniques available.

The GAO and the NSA reports both point out some of the flaws or the dangers of each type of technique.

The NSA report also goes on to say that the relative or comparable worth approach requires a generally acceptable standard of job worth and a feasible procedure for measuring relative worth of jobs. "In our judgment," the report states, "no universal standard of job worth exists, both because any definition of the relative worth of jobs is, in part, a matter of values and because even for a particular definition, problems with measurement are likely."

The GAO report goes in some length in terms of the value of job content analysis and also the economic analysis and says quite clearly that either one by itself would be sufficient for the Government to conduct a study. An economic analysis of the jobs and those marketplace factors that do enter into the decisions as to how much on a particular position will be paid is as important as a job content analysis in any type of study you may wish to implement. The legislation as presently written would remove all consideration of marketplace forces from the methodology.

The composition of the Commission on Compensation Equity which would oversee development of the methodology of the study under this bill is more inclusive than the Commission that would be created by similar House legislation.

In its report, the GAO recommended that the steering committee for such a commission be composed of all parties that have an interest in comparable worth, since those selected to carry out the study must be as objective as possible and represent all sides of the issue.

GAO recommends that the membership include experts in compensation, classification and economics, Members of Congress, women's groups, employment organizations, OPM, and representatives of the private sector.

I think small business' primary interest in comparable worth right now, in terms of the bill before you, a study of the Federal Government, are two things: First of all, as businessmen, tney look at the possible results of the study and if there needs to be, for example, significant increases in wages, what is the alternative that Congress will choose to pay for that. Increased taxes, cutting services or just adding to the deficit seem to be the only three alternatives available.

Also, they look upon this as a precedent-setting item which, in the past, whenever the Federal Government has done something for itself, it is not too long in coming with the private sector also has to comply, and S. 5, another bill before this subcommittee, would indeed point more directly to the private sector now than S. 519 does, charging the EEOC with certain responsibilities for coming up with job evaluation techniques that then could be used by the private sector.

Small firms in this country are on the cutting edge of the economy. They cannot ignore realities and demands in the marketplace or remain in business very long. They are labor intensive as opposed to capital intensive. The costs of carrying an employee is the most expensive part of running any small business. Anything that raises the cost to the employer without a corresponding rise in productivity will give the employer little choice. They will either have to lay off marginal workers or simply refrain from hiring additional unskilled workers. In most cases, small businesses do not have the same capacity as big businesses do to pass through extra costs to the consumer.

That is a tremendous disincentive, the paying off or the refraining from hiring people, because small businesses predominantly hire those people who really need the help: women, minorities, and youth.

All the administrative jobs in a small business are usually worn with separate, different hats by the same person, and that is, the business owner himself, or possibly a family member. There is no Department of Human Resources. There is no such thing as a formal job description for a small business.

So I think they are rightly concerned in keeping an eye out on what Federal Government might be doing for itself as an employer with the possibility of a precedent-setting action which will then impact small firms.

That will conclude my oral remarks. I will be happy to try and answer any questions.

Senator **Gore**. Thank you very much.

Are you aware that S. 519 has been amended to include economic analysis?

Ms. **Douglas**. No; I was not. I am quite happy to hear that.

Senator **Gore**. It is a very recent change. Does that alter your view in any way?

Ms. **Douglas**. I think in terms of a more studied approach to what you are trying to do, if you are going to combine the job content analysis and the market economic analysis, that certainly puts a different flavor to it. I would caution you in the same respect with all due respect to Senator Stevens' ability to draft legislation that, as the first witness said this morning, Mayor Isaac, if you do this study, you had better be prepared to implement it. You should be giving serious consideration about—this is not a bill where you are going to be able to look at something indefinitely. There are forces that will require you to move further. I would just simply say that that is still a caveat.

Senator **Gore**. Thank you. I will come back to questions if I have an opportunity.

I see that Sharon Spigelmyer has arrived. We are delighted to have you here. The time has been divided equally between proponents and opponents, and that translates down to 10 minutes for your formal presentation. It has been fairly distributed by the chairman. Without objection, we will put your prepared statement in the record, and if you could keep your oral presentation to 10 minutes, we would appreciate it and move on to questions.

Ms. SPIGELMYER. Do remind me, because I tend to be rather verbal like so many people when they get the opportunity to come before Congress.

But I do thank you for giving us the opportunity. I am Sharon Spigelmyer, the director of human resources and equal opportunity for the National Association of Manufacturers. I am here today representing our 13,600 corporate members which include manufacturers in every State and of every single size from the very small manufacturer to the very large. Our members have grappled with the idea of comparable worth and have looked at it very seriously. I can assure you that they oppose any kind of legislation, whether it be a study of the Federal Government or of the private sector, that will indicate that Congress is approving a concept of comparable worth.

I would particularly like to thank you for giving us the opportunity to address the General Accounting Office's report on comparable worth and options for conducting a pay equity study NAM's members' interest in the study of the Federal Government stems from one major concern, and that is, that through legislation, a precedent will be set for expanding title VII of the Civil Rights Act to incorporate the comparable worth standard for evaluating discrimination.

We believe that there are basically two premises at the heart of comparable worth which are fatally flawed. The first is that there is a measurable portion of the wage gap between men and women or minorities that can be attributed to discrimination. The second erroneous conclusion is that job evaluations are objective. In fact, most of the experts and all of the courts say that they are subjective and cannot be used as a measure for discrimination.

But undertaking a comparable worth study of the Federal Government, no matter what criteria are used, NAM believes that the Federal Government will buy itself and the American taxpayers a multi-billion dollar lawsuit. I just came from the House and they said that if you implemented a study similar to Minnesota and you had a 4-percent increase in the cost of the Federal Government, you would have a $2.4 billion increase based on what was done in Minnesota. I think that this Congress should be prepared to increase their budget immediately upon doing any study if they undertake one.

In general we believe that the GAO report poses more questions than it gives answers. It aptly points out that the potential financial and political ramifications of haphazardly undertaking a misguided study of the Federal Government could be very serious. NAM thinks that there are four major premises in the GAO report that we agree with: The first is that the wage gap between men and women can be attributed to any number of factors outside of discrimination; second, that job evaluations are subjective and varied and cannot scientifically quantify discrimination; third, that any comparison of jobs should incorporate both job content and economic analysis of the Federal system, and fourth, current law does not embrace the concept of comparable worth.

I would like to just quickly go over what we see the wage gap problem being and how the GAO report addresses it. There is no question that a wage gap between men and women exists. However, I would like to point out that the GAO figures were based on the Census Bureau Report of 1980, a result of data collected in the 1970's.

Much more recent data reflects the dramatic advances that women are making as their education levels increase and more of the women become steady work force participants. According to the Bureau of Labor Statistics, the medium weekly earnings of full-time wage and salary workers in the fourth quarter of 1984 showed that women are earning 66.26 percent as much as men. That still doesn't sound good, but it does show that women are making dramatic increases without this idea of comparable worth. I think that you will see that continued growth and the continued diminishment of the wage gap in the decade to come.

The real question revolves around what the wage gap means and whether it is the result of discrimination. The BLS statistics clearly show that the average working woman works fewer hours and has less seniority than the average working man.

Dr. Janet Norwood, the Commissioner of the Bureau of Labor Statistics with the U.S. Department of Labor, says that at least half of the gap can be attributed to differences in work history, education and skills, as well as their differences in occupational distribution.

The rest simply cannot be assumed to be discrimination. Job evaluations, I think, are at the heart of the whole idea of comparable worth, and the GAO report, in no way, in my opinion, endorses the idea that job evaluations are methods of isolated sex-based wage discrimination. In fact, the GAO analysis of job content and economic job evaluations show that both are fraught with the potential for ambiguity and differing results.

Furthermore, the report summarizes that neither job content nor economic analysis can explain all the differences between salaries paid for men and for women. I think the report specifically points out that it cannot be a tool for determining discrimination.

We would urge Congress that if it does decide to do a study of the Federal Government wage system, it not confuse discrimination with attempts to adjust pay to similar jobs. Discrimination under title VII of the Equal Pay Act focuses on equality of opportunity and promotion, training, hiring and equal pay for equal work. NAM believes that a study to root out discrimination should focus on any barriers that women and minorities face in such things as promotion, hiring, and training and whether they are being discriminated against in pay based on equal work. I think if that approach is taken, you will root out discrimination rather than launch into a new and uncharted area of the law.

Certainly, the approach outlined in S. 519 does not adhere to the GAO report, nor to the current law. We would oppose it. It would assume that the Government was in violation of discrimination whenever there is an unexplained wage gap.

I do not think that the Government wants to launch into a position where they will be found guilty until proven innocent. That is really quite the reverse from what the current law is.

In the current law, I would like to take a quick look at that. NAM generally agrees with the GAO's assessment with the current state of the law with regard to title VII of the Civil Rights Act and the Equal Pay Act. However, we would probably say much more strongly than the GAO report that the overwhelming majority of the courts have rejected comparable worth as an area of discrimination under title VII. All Federal or circuit courts which have considered the concept to date have refused to accept a claim of intentional discrimination based on comparison of similar jobs alone. The only case to uphold the comparable worth type case, the *AFSCME* v. *State of Washington* case, has been argued before the ninth circuit which rejected comparable worth in *Spaulding* v. *University of Iowa.* That court is expected to rule in the *State of Washington* case sometime in August.

Many are expecting that that case will be rejected or remanded. At any rate, I think that the ramifications of that *Washington State* case are so great it would only make sense for the Congress not to proceed with a study of the Federal Government until that case is decided.

As you know, the State of Washington is facing a $1.1 billion liability. The Federal Government has 30 times as many employees. I think you could look at a $30 billion liability if you proceed haphazardly with the study of the Federal Government.

At the time the GAO did its report, the Equal Employment Opportunity Commission had not issued its findings as to whether comparable worth was a recognizable concept incorporated in title VII, but on July 17 of this year, the EEOC categorically rejected a claim under title VII which showed nothing more than the wage differential between allegedly comparable jobs.

We just don't think that you should be proceeding into uncharted waters in this area. In the GAO report, about 35 different States are conducting some type of assessment of their State wage setting system. They are not all comparable worth studies, though, and I don't think that was properly pointed out in the GAO report. Many of the studies that are being done in the States are based on just current claims of discrimination, and some are just an assessment of the wage system itself. It has nothing to do with comparing dissimilar jobs.

I would say that an increasing number of States are rejecting comparable worth in comparable worth studies outright. I think that was also overlooked in the GAO report. North Carolina just passed legislation revoking funds for a study, after they had already passed a bill. Florida, Illinois, Pennsylvania, and Nevada are a few which have outright rejected legislation calling for comparable worth studies. I think this is a growing trend as more and more States recognize the pitfalls in this whole process.

I would also urge the Congress to take a look at what some of the States have that are not, Minnesota, are actually doing, because it has not been a panacea as the proponents would have you believe.

Iowa undertook a study which has puzzled many. For instance, the evaluator in Iowa determined that some bosses should be paid less then their employees. Some part-time employees should be paid the same as full-time employees doing the exact same job. It is also interesting to note that in Iowa, they found librarians were overvalued. The Iowa Legislature is so disgruntled with its study that they are temporarily halting implementation of their study which was expected to cost $30 to $50 million until these types of discrepancies are resolved.

If the Federal Government was to go ahead, based on the type of legislation introduced in the Senate, I think you would be forced to go ahead with implementing even a bad study or it would be considered to be a violation of discrimination laws.

Furthermore, it is interesting to note that Minnesota had a budget surplus, and so the panacea that they are routing there is quite different from what is here in the Federal Government, where you have a budget deficit. Iowa is also having trouble because they simply do not have a budget surplus to pay for their cost increases.

The GAO study also cites the city of San Jose as implementing a comparable worth study and what a panacea that was. However, they forgot to note that in San Jose, layoffs occurred and the taxes were increased shortly thereafter.

We think that a further review of some of the problems occurring as a result of comparable worth should be investigated before the Federal Government commits itself to such a project.

In conclusion, the GAO was not asked to review the merits of conducting a comparable worth study. Rather, they were asked to review the options in conducting such a study. It is our view that comparable worth is a fatally flawed concept and that no study should be undertaken. Furthermore, GAO was asked to assess the cost of conducting a study of the Federal Government and the potential liabilities once the study was completed. It did neither.

NAM believes that the Federal Government could easily find itself forced to implement a comparable worth study especially on the language in S. 5 and the compliance language we see in the House bills. Furthermore, we do not oppose a review of the current Federal system to determine if women and minorities are being denied opportunities, promotion, training or equal pay for equal work.

We do oppose any bill which calls for comparing dissimilar jobs to determine discrimination. It is not the law, and it should not be made the law.

Thank you.

Senator STEVENS. Thank you very much.

I am sorry, Ms. Douglas, I missed your statement. I was called to the phone. I appreciate your position. I can't have many questions after that statement.

[The prepared statements of the NFIB and the NAA follow:]

NFIB National Federation
of Independent Business

The Guardian of Small Business

STATEMENT OF

Sally L. Douglas
Manager of Legislative Research

NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Before: Senate Committee on Governmental Affairs, Subcommittee on Post Office and General Services

Subject: Comparable Worth

Date: July 24, 1985

On behalf of the more than 500,000 members of NFIB, I want to thank you for this opportunity to provide our thoughts on the subject of comparable worth. Over the past several years, there has been a great deal of activity in the states, in the courts, and now at the federal level to address the question of sex-based wage discrimination.

Small employers are the true providers of equal opportunity in our economy. Since the start of this decade, it has been small firms around the country that have created the vast majority of net new jobs. We are putting millions of Americans to work -- men, women, whites, blacks, Hispanics, the elderly, and most importantly, our youth. Small business provides these individuals with that important first job, through which they will gain those essential skills for continued progress and advancement in the workforce.

Government Relations and Research Office
600 Maryland S.W., Ste. 700
Washington, D.C. 20024
202/554-9000

Our typical NFIB member has about 7 or 8 employees, some of whom may be relatives. More than 15% of our members earn less than the minimum wage per hours worked. Policy questions on legislation are decided by vote of the entire membership through the Mandate, a publication sent out six times a year. I wanted to briefly paint this portrait of Main Street America to provide a reference point for the Members of the Subcommittee to refer back to as I move onto the subject at hand--comparable worth.

Comparable worth is a recent concept by which the "value" or "worth" of a particular job can be discovered through use of job evaluations to provide for a proper pay scale. It would be an understatement to say that the question of comparable worth has generated enormous controversy. Several of the major points of contention in the debate over comparable worth should be mentioned before moving on to the General Accounting Office (GAO) report, the legislation before this subcommittee, and the views of small businessmen and women around the country.

Proponents cite the 1981 Supreme Court decision in County of Washington v. Gunther as support for the concept of comparable worth. This is not wholly accurate. While the Court stated that Title VII is not limited just to cases of equal pay for equal work, the Court did not say whether or how these cases could be brought before the courts. Both the majority and minority opinions expressly declared that the Court was not basing its decision on the controversial concept of comparable worth.

The Equal Pay Act of 1963 already provides a remedy to women who are discriminated against on the basis of sex where they are paid less for performance of tasks equal to those performed by men. The Congress, during debate on the Act, considered and rejected the inclusion of a comparable worth clause as being too vague and open to too much interpretation. Twenty years later, this still holds true.

The question revolves around whether the wage gap that presently exists between men and women is solely attributable to discrimination on the part of employers. Proponents of comparable worth believe that this gap is attributable to discrimination, intentional or not, and therefore must be remedied, either through state or federal legislation or through the courts (though recently there have been some attempts to resolve the issue through collective bargaining). This viewpoint ignores several important distinctions.

First, there are many factors, such as education, on-the-job experience and skills, seniority, and continuity in the workplace, that account for discrepancies in wages. This is referred to as "human capital" and is cited by the GAO report as a proper tool for analyzing the wage gap.[1] All these "human capital" factors result in greater efficiency and productivity to the employer and higher wages for the employee.

According to Janet Norwood, Commissioner of the Bureau of Labor Statistics, one must be careful in using the aggregate median earnings of all men and women when attempting to compute the wage gap. This method is not wholly accurate, yet these figures were used to derive the traditional figure of $.59 to $.62 cited by proponents of comparable worth. If these figures are adjusted for such facts as work experience, occupation, and education--all items that relate to efficiency and productivity--you will arrive at a completely different set of numbers, resulting in a reduced wage gap of upwards to 50%.[2]

Commissioner Norwood also said that, based upon BLS surveys, women work fewer hours and have less seniority than men. Women are 2-3 times more likely to work part-time (35 hours a week or less) than men. Of all women employed full time, 17% work 35-39 hour weeks as compared to 5% of men. Additionally only 10% of all women worked more than 41 hours as compared to 24% of men. A 1983 survey on job tenure showed that women averaged 3.3 years (median) with their current employer, compared with 5.1 years for men.[3] These figures once again support the fact that factors other than discrimination can and do account for the wage differential.

Proponents of comparable worth ignore these factors, arguing that since discrimination in pay exists, and since employers rely upon the marketplace for decisions on wages, the marketplace should be totally excluded from any decision relating to the setting of wages. Proponents have therefore turned to job evaluations to determine the true "worth " or "value" of a job to an employer.

In 1981, the National Academy of Sciences released a report, Women, Work and Wages, requested by the Equal Employment Opportunity

Commission, on this very subject of job evaluations and their relationship to comparable worth. Though proponents may state otherwise, the report states clearly that:

> The concept of intrinsic job worth -- whether it exists, on what it should be based, whether there is a just wage -- has been a matter of dispute for many centuries. We do not believe that the value--or worth--of jobs can be determined by scientific methods. Hierarchies of job worth are always, at least in part, a reflection of values.[4]

Proponents wish the public to believe that there exists--not in Plato's world of forms, but in the real world--one job evaluation that is totally objective which will accurately define the "worth" of jobs. Employers stand accused of subjectivity in the measurement of work factors as they relate to wages. In turn, what assurances do employers have that the criteria selected for these "objective" job evaluations will reflect the reality of workplace and marketplace conditions? Who will choose the criteria? How will they be chosen out of all the hundreds of variables found in any job? And why just those particular few? In this respect, S. 519 shares the same flaw as H.R. 27, on which we testified in the House. There is a presupposition in S. 519 that there currently exists "standard objective job evaluation techniques" that can be used to determine the comparable value of different jobs.[5] That type of job evalution has never existed and never will.

Let me close this section on job evaluations with a final quotation from the NAS report:

> This relative (or comparable) worth approach in turn requires a generally acceptable standard of job worth and a feasible procedure for measuring the relative worth of jobs. In our judgment no universal standard of job worth exists, both because any definition of the 'relative worth' of jobs is in part a matter of values and because, even for a particular definition, problems of measurement are likely.[6]

S. 519 also ignores one of the more important findings contained in the GAO report with regard to methodology. An economic analysis of jobs--marketplace factors--is as important as a job content analysis in any type of study the Congress may wish to implement. This legislation as presently written would remove all consideration of marketplace forces from the methodology of the study. Any firm, especially a small one, ignores the reality of the marketplace at its own risk.

The composition of the Commission on Compensation Equity, which would oversee development of the methodology of the study under S. 519, is more inclusive than the commission that would be created by similar House legislation. S. 519 still falls short of the comprehensive scope recommended by the GAO for such a steering committee or commission.

In its report*, the GAO recommended that the steering committee be composed of all--I repeat, all--parties that have an interest in comparable worth, since those selected to carry out the study must be as objective as possible and represent all sides of the issue. GAO recommends that the membership include experts in compensation, classification, and economics; Members of Congress; women's groups; employee organizations; OPM; and the private sector.'

---

*Report by the Comptroller General of the United States "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems", March 1, 1985.

I would like to turn now to the practical aspects of what comparable worth would mean to the small employer. It has been a frustration of ours in the small business community that when Congress speaks of business, they tend to think of big business and feel that whatever legislation is passed, business can cope with it. That is not true for the local drycleaner, grocer, or flower shop.

Small firms are on the cutting edge of our economy. No small businessman or woman could ever ignore the realities and demands of the marketplace and remain in business very long. Small firms are labor intensive as opposed to capital intensive, primarily the realm of big business. The cost of carrying an employee is the most expensive part of running a small business, and anything that raises the cost of that employee without a corresponding rise in productivity gives the employer little choice--lay off those marginal workers or simply refrain from hiring additional unskilled workers. This is a tremendous disincentive which in the end hurts only those who really need the help--women, minorities, and youth.

All the administrative jobs in a small firm are often rolled up into one person--the employer. There is no Department of Human Resources. There is no such beast as a formal job description for a small business, let alone a full-blown job evaluation based upon a point factor system. Who is going to pay for this, the small employer? As I stated earlier, more than 15% of our members earn less than the minimum wage for hours worked.

Lastly, to whom would the small employer compare the worth of these jobs? What if there are not enough employees in his or her firm to compare with internally? Must an employer then compare jobs in his or her firm with those in another? If so, which one: the small firm across the street in a different line of business or the large firm down the street in the same business?

S. 5, unlike S. 519, immediately and directly impacts upon the private sector with regard to comparable worth. First, there is an assumption in the bill that comparable worth is the law of the land already. Equal pay for equal work, not comparable worth, is the law of the land.

Secondly, under Section Two of the bill "Statement of Findings", item eight reads that "objective job evaluation techniques now exist ... to determine the comparative value of different jobs."[8] I cannot stress strongly enough to the members of this subcommittee that there is no scientific basis for such an assumption. As I stated earlier with regard to S. 519, the NAS report clearly undercuts the objectivity and scope of job evaluations for purposes of determining comparable worth.

Part B under Section Four sets off all sorts of alarms. The EEOC is charged with developing and implementing "a program for providing appropriate technical assistance to any public or private entity requesting such assistance to eliminate discriminatory wage setting practices and discriminatory wage differentials."[9]

It is a very small and foreseeable step that the EEOC will be able to go to every small employer in the country and say, after much research, we have developed this fool-proof standardized job evaluation that you can use to do a comparable worth study.

I urge the members of the subcommittee to defeat this ill-conceived legislation.

Our testimony today represents the practical experience of employers who face the onslaught of the marketplace every day. We offer our insights to you as fellow employers who are seeking to examine your workforce, or rather, as you seek to examine the workforce of the administrative branch of government, while leaving the legislative branch untouched.

In any event, the GAO study provides an important corroboration that the influence of the marketplace -- in the form of an economic analysis -- is equally as important as job content in any type of job evaluation the Congress may wish to undertake. Once again, I would refer the Congress to the NAS study, which pointedly undercuts the "objective" validity of job evaluations seeking to determine the "worth" of a job. As always, any action taken by the federal government has potential ramifications for the private sector. I believe the GAO had this thought in mind when they recommended a rather extensive membership list for the steering committee, which included representatives of the private sector.

The members of NFIB would urge extreme caution on the part of the Congress as you begin deliberations on this matter. Thank you.
0213T

Footnotes

[1] Comptroller General of the United States, "Options for Conducting a Pay Equity Study for Federal Pay and Classification Systems", General Accounting Office, March 1, 1985. p. 21

[2] Dr. Janet L. Norwood, Commissioner of Labor Statistics, "Working Women and Public Policy", speech before the National Conference on Women, The Economy and Public Policy, June 20, 1984. p.5

[3] Ibid, pp. 7-8

[4] National Academy of Sciences, Women, Work, and Wages, Washington, DC 1981. p. 10

[5] S. 519 99th Congress, p. 3

[6] NAS, Women, Work, and Wages, p. 94

[7] GAO, "Pay Equity Study", p. 52-53

[8] S. 5 99th Congress, p. 3

[9] Ibid p. 7

National Association of Manufacturers

TESTIMONY OF

SHARON SPIGELMYER
DIRECTOR, HUMAN RESOURCES AND EQUAL OPPORTUNITY

NATIONAL ASSOCIATION OF MANUFACTURERS

ON

"OPTIONS FOR CONDUCTING A PAY EQUITY STUDY OF FEDERAL PAY AND CLASSIFICATION SYSTEMS"

BEFORE

THE SENATE SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE AND GENERAL SERVICES

JULY 24, 1985

1776 F Street, N.W. • Washington, D.C. 20006 • (202) 626-3700

TESTIMONY OF

SHARON SPIGELMYER
DIRECTOR, HUMAN RESOURCES AND EQUAL OPPORTUNITY

NATIONAL ASSOCIATION OF MANUFACTURERS

ON

"OPTIONS FOR CONDUCTING A PAY EQUITY STUDY OF FEDERAL PAY AND CLASSIFICATION SYSTEMS"

BEFORE

THE SENATE SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE, AND GENERAL SERVICES

JULY 24, 1985

Mr. Chairman and members of the subcommittee, I am Sharon Spigelmyer, Director of Human Resources and Equal Opportunity with the National Association of Manufacturers. I am here today representing our 13,600 corporate members, which include manufacturers of every size and industrial class located in every state. Members range in size from the very large to over 9,000 smaller manufacturing firms, each with an employee base of less than 500. NAM members employ 85 percent of the workers in manufacturing employment and produce more than 80 percent of the nation's manufacturered goods. Through the NAM's National Industrial Council and Associations' Department, the NAM is affiliated with an additional 158,000 employers.

On behalf of all our members, I'd like to thank you for the opportunity to address the Government Accounting Office's report on comparable worth and options for conducting a "pay equity" study of the federal pay and classification systems.

NAM members' interest in a study of the federal government stems from one major concern: that is, that through legislation a precedent will be set for expanding Title VII of the Civil Rights Act to incorporate a comparable worth standard for evaluating discrimination. NAM believes there are two basic premises at the heart of comparable worth which are fatally flawed. The first is that a measurable portion of the wage gap between men and women (or minorities) can be attributed to sex discrimination. The second erroneous conclusion is that job evaluations are an "objective" measure of the inherent worth of a job and resulting discrimination. NAM believes that the GAO report substantiates these premises.

Since we believe comparable worth studies cannot root out discrimination, NAM believes they should not be undertaken by the federal government. By undertaking a comparable worth study, no matter what criteria are used, NAM believes the federal government will buy itself, and the American taxpayers, a multi-billion lawsuit. The bottom line is that increased wages for particular occupations will neither eliminate discrimination nor enhance federal productivity. Furthermore, there are serious concerns that such a "study" bill will have spillover effects on the private sector because sex discrimination is redefined.

In general, we believe the GAO report poses more questions than it answers. However, it aptly points out the potential financial and political ramifications of haphazardly undertaking a misguided study of the federal government. NAM is pleased to be able to comment on the specifics of the GAO report. The significant aspects of the report, NAM believes, are, 1. the wage gap between men and women can be attributed to any number of factors outside discrimination; 2. job evaluations are subjective, varied and cannot scientifically quantify discrimination; 3. any comparison of jobs should incorporate both job content and economic analysis of the federal system; 4. current law does not embrace the concept of comparable worth.

I. The Wage Gap: The Facts

There is no question that a wage gap between men and women exists. However, the figures used by the GAO report were based on the Census Bureau report of 1980, a result of data collected in the 1970s. Much more recent data reflects the dramatic advances women are making as their educational levels increase and more become steady workforce participants. According to the Bureau of Labor Statistics, the median weekly earnings of full-time wage and salary workers in the fourth quarter of 1984 show that women earned 66.26 percent as much as men. This continued narrowing of the gap shows that women are making significant progress in entering nontraditional jobs and moving into managerial, higher paying positions.

The real question revolves around what the wage gap means and whether it is the result of discrimination. The BLS statistics clearly show that the "average" working woman works fewer hours and has less seniority than the "average" working man. Dr. Janet Norwood, Commissioner of Labor Statistics with the U.S. Department of Labor, in a 1984 speech on "Working Women and Public Policy" cautioned that statistics cannot account for all the difference in the pay gap. However, she said that at least half of the gap can be attributed to "differences in the work history and education and skills that men and women bring to the marketplace, as well as differences in their occupational distribution." Her speech was notably optimistic about the future of women's earnings. Among workers under age 25, women earned 90 percent as much as men in 1983. And, she pointed out, women are "clearly moving into higher paying jobs."

The GAO report fails to reflect the dramatic shifts of women into higher level, higher paying jobs in the past few years. But the report does reflect a phenomenon that undoubtedly results in a good portion of the gap -- that women are concentrated in few occupations within the federal system.

In the private sector, companies continue to review their job classification and pay systems to determine if there are barriers to prohibiting women from moving into nontraditional jobs or into managerial positions. Many companies have embarked on programs to affirmatively recruit and hire women into nontraditional jobs. Thus, any discrimination in occupational segregation is removed.

If women and men are paid equally for doing the same jobs, and opportunities are afforded all to move into whatever job a person is qualified, it is erroneous to assume pay gaps are the result of discrimination. Simply because one occupational group, which happens to be predominated by a particular sex or race is paid less, does not indicate that discrimination has played a role.

In fact, Yale University economics professor Jennifer Roback cites a little known fact -- "only 40 percent of the earnings of white men can be accounted for by measurable factors. That is, if we look at a population of white men, a full 60 percent of the differences in earnings cannot be explained." In summing up, she states, "The presence of discrimination can neither be proven nor disproven with statistical tests."

A wage gap, in and of itself, is meaningless.

II. JOB EVALUATIONS ARE TOOLS, NOT INDICATORS OF DISCRIMINATION

The GAO report in no way endorses the idea that job evaluations are methods of isolating sex-based wage discrimination. In fact, the GAO analysis of job content and economic job evaluations show that both are fraught with the potential for ambiguities and differing results. Furthermore, the report summarizes that neither job content nor economic analysis can explain all the differences between salaries paid men and women. The report also says that both approaches, combined, will not come up with an objective measure discrimination.

NAM agrees with the GAO's assessment of job content reviews of wage systems: "The validity of an evaluation system is difficult to gauge due to the lack of generally accepted criteria of job worth."

Options for Conducting A Pay Equity Study of Federal Pay and Classification Systems, GAO/GGD-85-37, March 1, 1985, page 31.

We also share the views of the National Academy of Science, reported in its 1981 study, Women, Work, and Wages, which the GAO report explores. The NAS stated that job evaluations are "inherently subjective" and "less than optimal" in resolving pay disputes. The problems, according to the NAS, include: 1) factors and factor weights may be biased; 2) the entire evaluation process is subjective, therefore reflecting the values of those conducting the study; 3) statistical procedures in determining factors and factor weights have serious shortcomings; and 4) the use of more than one study within one entity can call for different valuations of different sectors in the workforce.

NAS concluded that job evaluations are helpful tools in wage setting practices. NAM agrees. Many of our members do, indeed, undertake job evaluations of their workforce as a tool in setting wages. They use these evaluations, in combination with an assessment of marketplace factors, economic analysis, individual merit, union contracts and any number of other factors, in determining wages. However, job evaluations are subjective and cannot by themselves be used to evaluate the extent of either sex or minority discrimination.

The overwhelming majority of courts, as noted in the GAO report, have rejected the concept of comparable worth ... many because of the inherent subjectivity of job evaluations and the problems of comparing dissimilar jobs.

U.S. District Court Judge Charles P. Kocoras, in dismissing the American Nurses Association comparable worth claim against the State of Illinois, No. 84-C-4451 (E.D. Ill., April 4, 1985), slip opinion, page 11, stated, "Because jobs do not have an intrinsic value that can be scientifically measured, the limitations inherent in job evaluation techniques prohibit the proposed extension of Title VII."

In Briggs v. City of Madison, 536 F. Supp. 435 (W.D.Wis. 1982), Judge Barbara Crabb also rejected the notion that job evaluations could measure sex discrimination. She said, "I find unpersuasive the basic premise that ... anyone possesses the intellectual tools and data base that would enable them to identify the extent to which the factor of discrimination has contributed to or created, sex segregated jobs, and to separate that factor from the myriad of nondiscriminatory factors that may have contributed to the same result." Id. at 444.

NAM agrees with the GAO findings that such things as the following play important roles in wage differentials: marketplace supply and demand factors; skills, training, education and working conditions; individual merit; union contracts; veteran status; military status; regional differences; seniority, and productivity.

Furthermore, we agree that quantifying each and everyone of these factors will still not explain a wage gap. NAM believes it would be particularly difficult to assess any level of discrimination between the GS system, which is predominantly white collar workers, and the FWS system, which is predominanly blue collar workers. The reason is simple. The GS system is a nationwide system, such that a secretary in Peori, Illinois, is paid the same in New York City or Los Angeles. However, the FWS system is based on local rates, such that it is unlikely that a plumber in New York City is paid the same as a plumber in Alabama. Certainly it is possible for a job evaluator to then compare the wages of a secretary in New York City with that of a plumber. But the comparison will not root out discrimination. It will point out the effects of having two different systems of pay. As long as both men and women are allowed and encouraged to work in any job they are qualified for and are then allowed to be promoted without regard to sex, NAM believes the mere existence of wage gaps is not an indication of discrimination.

In its introduction, GAO admits that its work merely "confimred the complexity of the pay equity issue and the need for continued, careful planning if a federal study is to be done." We agree that job content analysis alone certainly will not determine if sex discrimination exists. Any study of the federal government must also include an economic analysis, which would include marketplace supply and demand factors, as well as personal factors such as seniority, merit and productivity. However, both kinds of studies are subjective and will produce varying kinds of results depending on who conducts the study.

A perfect illustration of how various job evaluators rank jobs differently can be illustrated by a comparison of four states -- Wisconsin, Iowa, Minnesota, and Washington, -- three of which have implementation program in effect. The Wisconsin Manufacturers Association compared the outcomes of the studies in all four states in terms of percentages. The comparison assumed that an electrician would be equal to 100 percent in all four states and the other job categories were ranked in comparison. The outcomes were staggering.

JOB WORTH POINTS AS A PERCENTAGE OF POINTS ASSIGNED TO ELECTRICIANS

	Wisconsin	Iowa	Minnesota	Washington
Electrician	100	100	100	100
LPN 2 (nurse)	150	124	79	108
Dental Assistant	108	77	50	73
Telphone Operator	91	64	49	60
Data Entry Op. I	55	72	43	63

The chart illustrates, in terms of percentages, what five other professions are paid. Note, that in three states licensed practical nurses were rated higher than electricians, while Minnesota rated them considerably lower than electricians. In Wisconsin, the job evaluator ranked dental assistants more valuable than electricians, while in Minnesota they were found to be worth only half of what electricians were to be paid.

All this chart points out is that jobs do not have an intrinsic worth which can be measured since these comparisons were all done based on comparable worth studies.

We would urge Congress that if it decides a study of the federal government wage system is necessary, it will not confuse discrimination with attempts to adjust pay of dissimilar jobs. Discrimination, under Title VII and the Equal Pay Act, focuses on equality of opportunity in promotion, hiring and training and equal pay for equal work. NAM believes a study to root out discrimination should focus on any barriers women and minorities face in promotion, hiring and training. We do not believe comparing dissimilar jobs based on economic analysis and/or job content will reveal any level of discrimination.

Certainly, the approach outlined in S. 519 does not adhere to the GAO report, nor to current law. We would oppose it. Furthermore, S. 5 is premised on the belief that a model job evaluation could be designed for the private sector in order to eliminate sex-based wage discrimination. We disagree. The GAO at least points out the myriad of job evaluations now available and the problems inherent with all of them.

III. CURRENT LAW DOES NOT ENCOMPASS COMPARABLE WORTH

NAM, in general, agrees with the GAO's assessment of the current state of the law with regard to Title VII of the Civil Rights Act and the Equal Pay Act of 1963. However, we would strongly say that the overwhelming majority of the courts have rejected comparable worth as a theory of discrimination under Title VII. All federal circuit courts, which have considered the concept to date, have refused to accept a claim of intentional discrimination based on the comparison of dissimilar jobs alone.

The theory has been rejected by the Eighth Circuit in Christensen v. State of Iowa, 563 F.2d 353 (1977); the Ninth Circuit in Spaulding v. University of Iowa, 740 F.2d 686 (1984); the Tenth Circuit in Lemon v. City and County of Denver, 620 F.2d 228 (1980) and the Fifth Circuit in Vuyanich v. Republic Nat. Bank of Dallas, 723 F.2d 1195 (1984).

The only case to uphold a comparable worth-type case, AFCSME v. State of Washington, No. C82-465T (W.D. Wash. Dec. 15, 1983), has been argued before the same Ninth Circuit which rejected comparable worth in Spaulding V. University of Iowa, 740 F.2d 686 (1984). The court is expected to rule in the State of Washington case sometime in August. Many are expecting the case will be remanded for further evidence or rejected outright. At any rate, the ramifications of the case are so great, that it would only make good sense for the Congress not to proceed with a study of the federal government based on comparable worth until the court hands down its decision.

NAM believes it is significant, however, that the lower court in the Washington State case ruled for the plaintiffs, upholding the argument that a job evaluation alone is proof of intentional discrimination. Washington now faces a $1 billion liability for present and past wages. Should the federal government undertake a study and not implement it, the ramifications based on the Washington decision would be potential liabilities of billions and billions of dollars.

At the time the GAO did its report, the Equal Employment Opportunity Commission had not issued its findings as to whether comparable worth was a recognizable concept incorporated in Title VII. But on June 17, 1985, the EEOC categorically rejected a claim under Title VII which shows nothing more than a wage differential between allegedly comparable jobs. The commission concluded that "the mere predominance of individuals of one sex in a job classification is not sufficient to create an inference of sex discrimination in wage setting." In rejecting a claim that was based solely on a comparison of one job to another that was paid more, the EEOC observed that "Congress never consented to wholesale governmental restructuring of the valuations of jobs established by the non-sex based decisions of employers, the collective bargaining process, or by the mechanisms of the marketplace."

The U.S. Supreme Court has yet to rule on a pure comparable worth case. In County of Washington v. Gunther, the Supreme Court carefully articulated that it was not deciding the "controversial concept" of comparable worth, but rather its decision hinged on direct evidence of intentional discrimination.

NAM disagrees with the GAO's assessment of some of the post-Gunther cases, however. We do not believe either Taylor v.

Charley Bros. Co., 25 FEP Cases 602 (W.D. Pa. 1981) or Briggs v. City of Madison, 536 F. Supp. 435 (W.D. Wisc. 1982) implicitly endorses the concept of comparable worth.

Taylor represents one of the clearest cases of intentional discrimination on the books. In that case, the employer intentionally segregated women into "female-dominated" professions; classified women as part-time employees even though they worked full-time; gave men seniority beginning they day they started work, but did not do the same for women; prohibited women from applying for particular jobs; paid men and women doing substantially the same jobs differently; failed to consider women for promotions to supervisory positions. In the list of 29 violations the court cited the employer with, only one mention was made to the defendant's failure to perform a job evaluation. Thus, it can hardly be said this case stands for the proposition that failing to conduct a pay study constitutes discrimination.

In Briggs v. City of Madison, the court specifically rejected the idea that job evaluations can quantitatively evaluate discrimination. More significant are the cases which have flatly rejected the idea of comparable worth since the Gunther decision.

In summary, it is our belief that only one lower court has given its approval to the comparable worth concept, a federal district court in the AFCSME v. State of Washington case. We believe that job evaluations are not enough to prove intentional discrimination and should not be the focus of a study by the federal government.

IV. COMPARABLE WORTH IN THE STATES: VARIED AND IMPERFECT

As noted in the GAO report, about 35 states are conducting some type of assessment of their state wage setting system. But, the studies vary greatly. Many of the states are not focusing only on jobs dominated by men and women, but are broadly reviewing job classifications of all jobs. This certainly appears to be a better approach. Many are reviewing their systems to determine if there are Title VII or Equal Pay Act violation as the courts have interpreted them.

But, indeed, some states have embarked on a review of pay systems based only on gender-predominated jobs. Even among states conducting comparable worth studies, approaches differ. Some consider a sex segregated occupation one with 70 percent men or women; other say 80 percent will qualify an occupation as sex predominated. Still others say 60 percent or 90 percent. Obviously, results differ according to the cutoff line.

What the GAO report fails to discuss are some of the problems and concerns which have arisen as a result of comparable worth studies. In Minnesota, where pay increases amounted to about $42 million, it is interesting to note the state was able to pay for the increases with a budget surplus. The legislature now has a law mandating that local governments undertake comparable worth studies and implementation programs. The process is not as smooth for those localities which are experiencing financial hardship. Furthermore, a bill has been introduced to exempt the firefighters and police from a comparable worth study, an indication that not all government employees find this a palatable idea.

Iowa undertook a study, which has puzzled many. For instance, the evaluator determined that some bosses should be paid less than their subordinates; and that some part-time employees should be paid the same as full-time employees doing the same job. It is also interesting to note that Iowa found that librarians were overvalued. The Iowa legislature is temporarily halting implementation of their study, expected to cost $30 to $50 million, until these types of discrepancies are resolved.

The GAO study cites the city of San Jose as implementing a comparable worth study. However, it is interesting to note that the union in San Jose negotiated with the city for salaries far below what the study suggested. Furthermore, layoffs resulted shortly after the pay increases occurred.

We think a further review of some of the problems occuring as a result of comparable worth should be investigated before the federal government commits itself to such a project.

V. CONCLUSION

The GAO was not asked to review the merits of conducting a comparable worth study. Rather, they were asked to review the feasible approaches in conducting such a study. It is our view that comparable worth is a fatally flawed concept and that no study should be undertaken.

Furthermore, the GAO was asked to assess the costs of conducting a study of the federal government and the potential liabilities once a study was completed. It did neither. NAM believes that the federal government could easily find itself forced to implement a comparable worth study, especially if the study is approached in a manner set out in S. 5 or S. 519.

NAM does not oppose a review of the current federal system to determine if women or minorities are being denied opportunities, promotion, training or equal pay for equal work. However, we oppose a bill which calls for comparing dissimilar jobs to determine discrimination. It is not the law and should not be made the law.

Senator STEVENS. We will continue our hearings tomorrow.

[Whereupon, at 12 o'clock noon, the subcommittee hearing was adjourned, to reconvene at the call of the Chair.]

"OPTIONS FOR CONDUCTING A PAY EQUITY STUDY OF FEDERAL PAY AND CLASSIFICATIONS SYSTEMS"—REPORT OF THE GENERAL ACCOUNTING OFFICE

THURSDAY, JULY 25, 1985

U.S. Senate,
Subcommittee on Civil Service,
Post Office, and General Services,
Committee on Governmental Affairs,
Washington, DC.

The subcommittee met at 10:14 a.m. in room SD–138, Dirksen Senate Office Building, Hon. Ted Stevens (chairman of the subcommittee) presiding.

Present: Senators Stevens and Gore.

Also present: Senator Evans.

Staff present: Wayne A. Schley, staff director; Jeffrey D. Landry, assistant counsel; Pat Phillips, chief clerk; Thurgood Marshall, Jr., minority staff director and counsel.

Senator **Stevens**. I apologize for the delay. I have had to chair one other meeting, and this is the third meeting I have been to this morning. It looks like we have a vote on. Would staff check that, please?

We are proceeding with another day of hearings on the General Accounting Office study on "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems."

We look forward to hearing from our witnesses regarding this report. In order to achieve a balanced hearing record, we have allotted time as equally as possible between the proponents and opponents of pay equity.

This is the fourth of such hearings we have held, and our first witness this morning is Mr. Lawrence Lorber.

Thank you.

TESTIMONY OF LAWRENCE Z. LORBER, ATTORNEY, BREED, ABBOT & MORGAN, REPRESENTING THE AMERICAN SOCIETY FOR PERSONNEL ADMINISTRATION, ACCOMPANIED BY RONALD PILENZO, PRESIDENT, AMERICAN SOCIETY FOR PERSONNEL ADMINISTRATION

Mr. **Lorber**. Thank you, Mr. Chairman.

I would request that our full remarks be inserted into the record, but with your permission, we will summarize it at this point.

Senator **Stevens**. Thank you very much. I understand you do represent the American Society for Personnel Administration?

Mr. **Lorber**. Yes.

Senator **Stevens**. You are accompanied by Ronald Pilenzo, who is president of the American Society for Personnel Administration; is that correct?

Mr. **Pilenzo**. That is correct.

Senator **Stevens**. Thank you very much, gentlemen. We will put your full statement in the record.

Mr. **Lorber**. My name is Lawrence Lorber. I am testifying today on behalf of the American Society for Personnel Administration. Accompanying me today is Mr. Ronald Pilenzo, president of ASPA. Mr. Pilenzo has had a long background in compensation including serving in executive-level compensation positions in several Fortune 500 companies.

Prior to joining my law firm, I was the Director of the Office of Federal Compensation Compliance Programs under the Ford administration. ASPA is the world's largest organization for human resources professionals, with over 34,000 members in the United States and 42 other countries. Its members represent the full array of human resources skills, including compensation, job evaluation, personnel administration, and related areas.

For the record, I would like to summarize the statement issued by ASPA in 1985 regarding the issue of comparable worth, which I think is relevant to the issue before this subcommittee today.

> It is ASPA's belief that properly designed and administered compensation programs afford the greatest opportunity to ensure that bias not enter into setting pay and that the adoption of legislation or regulations embracing the concept of comparable worth is unnecessary and inappropriate given our economic system.
>
> ASPA is firmly committed to equal pay for equal work, to the principles of affirmative action and to continued effort to ensure that all persons are afforded equal opportunity to compete for every job. These are the appropriate solutions to the issues of compensation disparity, which underlies the comparable worth controversy. ASPA is in favor of focusing resources on the realization of free mobility into all jobs for all who will qualify.

It is with this background that we are pleased to offer this testimony. The purpose of this hearing is to review the report "Options for Conducting a Pay Equity Study of Federal Pay Classification Systems", as well as S. 519.

Indeed, the ramifications of the GAO report and the wage study proposed by the GAO deserve a full review. The underlying assumptions of the GAO report regarding both the legal status of comparable worth and the state of the development of job evaluation systems needs to be examined very carefully.

In our view, the GAO report has ignored a compelling body of law which has evolved over the past several years, rejecting the comparable worth theory based on current statutes. Rather, the report gives undue weight to one district court opinion which implies some legal liability when an employer declines to implement the job evaluation study, the famous *AFSCME* v. *Washington* case, currently on appeal to the ninth circuit. This opinion has been rejected by every court which has reviewed it, most recently by a Federal district court in Illinois, in a case, *American Nursing Association* v. *State of Illinois.*

Further, undue reliance is placed in the GAO report on another district court decision, *Taylor* v. *Charley Brothers.* In *Charley Brothers,* the district court based its finding of sex discrimination on blatant discriminatory actions by the employer, including intentionally segregating women into lower paying jobs and making repeated offensive statements that demonstrated contempt for working women. In no way was the employer's liability based on the fact that it had not conducted or implemented a job evaluation study.

The second flaw in the GAO report is its apparent misunderstanding of job evaluation systems and their use. Put simply, the GAO asks too much of job evaluation as it is currently developed. While properly structured and administered job evaluation studies are valuable tools for effective personnel management and compensation programs, they are inherently subjective and require careful correlation with market wage levels.

Simply labeling these studies as objective or transforming these studies into obligations which these employers are legally bound to implement shows a fundamental misunderstanding of their function.

Thus, the premises under which the GAO recommended that a Federal pay equity study be undertaken are so flawed as to bring the entire study into question. These flaws are significant enough so as to raise doubts regarding what legitimate responses, if any, could be expected to the proposed study.

Further, this committee cannot act in a vacuum. The work-places in our country cannot be neatly compartmentalized into public sector-private sector, Federal and non-Federal. We have moved a long way from the days when the various employment sectors were unique. Changes in Federal employment policies cause change in the private sector, and the reverse is true, as well.

Thus, the private sector has a vital interest in the GAO report and the legislation before this committee. We also would urge this committee to consider seriously the potential for significant legal liability to the Federal Government if a study conducted according to the methodology of the GAO report is undertaken.

The report assumes that unexplained compensation differences between similar but not equal jobs is evidence of discrimination. While this misstates the law, such a hypothesis would nevertheless be built into a GAO-type study. Too, there have been cases such as *Segar* v. *Smith*, recently decided in the D.C. Circuit Court of Appeals, in which wage disparities have been deemed to prove discrimination. While in *Segar* the court used the wage disparity data not to show compensation discrimination but as proof of hiring and classification problems for the U.S. Marshal Service. The GAO methodology and assumptions would, in conjunction with a consultant's report, be used to establish significant liability for the Federal Government.

We would not urge that a study not be done simply because it might result in findings that the Government would rather not receive, but we would strongly caution that a study which is flawed in concept and skewed in methodology could well be converted into a document which can be turned against the Government. Thus, particular care has to be taken to assure that a study is properly designed and is based on professionally accepted assumptions.

Unfortunately, we are a long way from that point, and the GAO study does nothing to move us any closer.

As I noted, the law regarding comparable worth is clear. With the exception of one district court opinion, the courts have proven to be universally inhospitable to the concept of comparable worth and to its recognition as a theory of liability under title VII.

A lengthy discussion of the legal status of the comparable worth theory is contained in the monograph on comparable worth, "Sex and Salary", recently published by the ASPA Foundation. That discussion is appended to this testimony.

The point to be made here is not simply that there is not the ambiguity in the law regarding comparable worth that the GAO suggests. That much is clear. Rather, of particular interest is the many judges sitting in district courts and courts of appeal throughout the country who have examined the theory in depth and have concluded that it is simply not one which is susceptible to adjudication in the courts.

Too, no court, even including the AFSCME district court, has endorsed the proposition that statistical differences between the compensation of dissimilar jobs is sufficient to show intentional discrimination.

It is this message which is absent from the GAO report, but it is this message which this committee should heed.

We would note, as well, again, that job evaluation systems are inherently subjective. Job evaluation is simply a means to enable an employer to organize its own priorities and establish a methodology to standardize the wage-setting process so that there can be internal consistency in establishing wages. Much of the confusion and misleading rhetoric about wage setting is caused by the fact that instead of speaking of internal consistency, proponents of job evaluation as a legal obligation use the term "internal equity." There is a significant difference.

We have included in our testimony on page 12 a chart which we would commend to the attention of this committee. It is a chart which compares the job worth points given to five separate jobs by job evaluation studies in four States. Two of the States, Iowa and Minnesota, have adopted comparable worth legislation or have commissioned studies. The State of Washington we know about, and the State of Wisconsin has recently debated and changed significantly a comparable worth proposal by its Governor.

The point to be made here is that we have five jobs in four States, three of which are contiguous. The jobs are all basic jobs in which there cannot be any substantial difference in the work performed or the conditions under which the work is performed. Yet we find vast disparities in the ratings given to these jobs by compensation consultants for these four States.

One could look at this and ask simple questions: Does the State of Minnesota, a State which is heralded as being the in forefront of comparable worth, discriminate against licensed practical nurses because it rates those jobs at almost one-half the value that the State of Wisconsin has rated them? Similarly, we find vast disparities in the ratings for dental assistant between Washington and

Wisconsin, and between data entry operators between Wisconsin and Iowa.

The point here, Mr. Chairman, is that there is no single methodology of compensation evaluation, nor is there a single methodology of job evaluation given by one consultant. The task of reviewing and/or gaining through the Federal Government's own study or establishing through the Federal Government's study a finding that it may be guilty of discrimination because under the study's methodology and theory of job content and job evaluation certain jobs may be misrated is something that this committee should heed very carefully and be aware of the consequences.

Mr. Chairman, comparable worth is an issue which has been debated in the press and debated in the Congress. Unfortunately, it is an issue which, in our view, has simply not been focused or understood as to its ramifications and to its impact. We urge this committee, before it undertakes a study of the Federal sector, with ramifications for the Federal Government and beyond, to carefully consider what it is doing and carefully consider the fact that the state of this professional law is simply not to the point where legal standards can be established based upon its own concepts.

Thank you.

Senator **Stevens**. Thank you.

Mr. Pilenzo, do you have any comments to make?

Mr. **Pilenzo**. I think there is one important point that should be made in regards to the study that the Federal Government is seeking to undertake. I would like to underscore what Mr. Lorber has said and add something else. I think if a study were to be conducted by the Federal Government, that it would be wiser and more efficient to direct the study to determine why the wage gaps exist and not presume that the differences are based on discrimination.

Such a study should review whether or not upward mobility schemes exist in the Federal Government that allow people to self-elect jobs that they wish to fill? Does the system provide adequate training funds so that people can be adequately trained to bid on higher level positions?

In other words, we believe the answer to comparable worth is not legislating pay equity, whatever that means—because it means different things to different people—but to look at the root causes of why these so-called discrepancies in wages exist and determine as best we can, how to free up the upward mobility of people who choose to make different choices in careers.

So I believe that if a study were to be conducted and if I were to conduct that study, I would not presume that wage differences are inherently based on discrimination.

Senator **Stevens**. Thank you very much. We appreciate your testimony, and I noted the article attached to your statement which we will refer to in our report.

Thank you very much.

[Mr. Lorber's prepared statement, with attachments, follows:]

aspa
Managing Human Resources

STATEMENT
OF
THE AMERICAN SOCIETY FOR PERSONNEL ADMINISTRATION

BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE, POST
OFFICE AND GENERAL SERVICES

COMPARABLE WORTH HEARINGS

Lawrence Z. Lorber

July 25, 1985

American Society For Personnel Administration
National Headquarters • 606 N. Washington Street • Alexandria, Virginia 22314 • Phone: 703/548-3440

Mr. Chairman, Members of the Subcommittee:

My name is Lawrence Z. Lorber. I am a partner in the law firm of Breed, Abbott & Morgan. I am testifying today on behalf of the American Society for Personnel Administration (ASPA). Accompanying me today is Mr. Ronald Pilenzo, APD, President of ASPA. Mr. Pilenzo has had a long background in compensation including serving in executive-level compensation positions in several Fortune 500 companies. Prior to joining my firm I was Director of O.F.C.C.P from 1975-76. ASPA is the world's largest association for human resources professionals, with over 34,000 members in the United States and 42 other countries. Its members represent the full array of human resources skills, including compensation, job evaluation, personnel administration and related areas.

With respect to Comparable Worth, ASPA has long studied the issue. It participated in the 1980 EEOC Hearings, testified before the House Post Office and Civil Service Committee in 1984, and twice in 1985, before several State legislative bodies and Task Forces, and has sponsored seminars and studies on the issue. In 1985 the ASPA Board adopted the following policy regarding the Comparable Worth issue:

POSITION OF
THE AMERICAN SOCIETY FOR PERSONNEL ADMINISTRATION
ON THE ISSUE OF
COMPARABLE WORTH

The American Society for Personnel Administration (ASPA) has for years and continues to be in the forefront of efforts to professionalize and advance the field of personnel management. ASPA has devoted considerable energy to helping its members acquire the skills and knowledge necessary to develop and administer compensation programs which are equitable, accurately reflecting the value of the work performed and the value of the job in the marketplace. The Society continuously conducts seminars and conferences dealing with compensation issues and techniques, utilizing compensation experts.

It is ASPA's belief that properly designed and administered compensation programs afford the greatest opportunity to ensure that bias not enter into setting pay and that the adoption of legislation or regulations embracing the concept of comparable worth is unnecessary and inappropriate given our economic system.

The courts have recognized that an endorsement of the vague concept of "comparable worth" would necessitate massive involvement by the courts in restructuring and governing one of the most sensitive aspects of the economy. Such involvement is inconsistent with the legislative history of the Equal Pay Act and Title VII of the Civil Rights Act.

ASPA is firmly committed to equal pay for equal work, to the principles of affirmative action and to continued effort to ensure that all persons are afforded equal opportunity to compete for every job. These are the appropriate solutions to the issues of compensation disparity, which underlies the comparable worth controversy. ASPA is in favor of focusing resources on the realization of free mobility into all jobs for all who are qualified.

It is with this background that we are pleased to offer this testimony. The purpose of this hearing is to review the G.A.O. report -- Options for Conducting a Pay Equity Study of

Federal Pay and Classification Systems,as well as S. 519 Indeed, the ramifications of the G.A.O. Report, and the wage study proposed by the G.A.O., deserve a full review. The underlying assumptions of the G.A.O. Report regarding both the legal status of comparable worth and the state of the development of job evaluation systems need to be examined very carefully.

In our view, the G.A.O. report has ignored a compelling body of law which has evolved over the past several years rejecting the comparable worth theory based on current statutes. Rather, the Report gives undue weight is given to one District Court opinion which implies some legal liability when an employer declines to implement a job evaluation study, AFSCME v. Washington, 578 F. Supp. 846 (D. Wash. 1983), currently on appeal to the Ninth Circuit. This opinion has been rejected by practically every Court which has reviewed it, most recently by a Federal District Court in Illinois in American Nursing Association v. State of Illinois, 37 FEP Cases 705 (N.D. Ill. 1985). And undue reliance is placed as well on another District Court decision, Taylor v. Charley Brothers, 25 FEP Cases 602 (W.D. Penn. 1981). There, the significance of an oblique reference in the opinion to the fact that the employer had not undertaken a job evaluation study is vastly overstated by the G.A.O. Report to the effect that this opinion creates some duty to undertake such a study. In Charley Bros., the District Court based its finding of sex discrimination on blatant, intentional discriminatory actions by the employer, including intentionally segregating women into lower paying jobs and making repeated, offensive statements that demonstrated contempt for working women. In no way was the employer's liability based on the fact that it had not conducted or implemented a job evaluation study.

The second flaw in the G.A.O. Report is its apparent misunderstanding of job evaluation systems and their use. Put simply, the G.A.O. asks too much of job evaluation as it is currently developed. While properly structured and administered job evaluation studies are valuable tools for effective personnel management and compensation programs, they are inherently subjective and require careful correlation with market wage levels. Labeling these studies as"objective" or transforming these studies into obligations which employers are legally bound to implement shows a fundamental misunderstanding of their function.

Thus, the premises under which the G.A.O. recommended that a federal pay equity study be undertaken are so flawed as to bring the entire study into question. These flaws are significant enough so as to raise doubts regarding what legitimate responses, if any, could be expected to the proposed study.

Too, this Committee cannot act in a vacuum. The work places in our country cannot be neatly compartmentalized into public sector-private sector; federal and non-federal. We have moved a long way from the days when the various employment sectors were unique. Changes in federal employment policies cause changes in the private sector. And the reverse is true as well. For a long period of time, federal personnel managers have espoused the principle of comparability between the federal compensation system and the private sector. It would be disingenuous to now say that federal personnel policy is of no interest to the private sector. Organizations such as ASPA must raise, as a legitimate issue for public discourse, the potential impact of a study such as that recommended by the G.A.O. on the private sector. It is the private sector which pays the federal payroll and the private sector which can have its own personnel and compensation policies impacted adversely by federal activity. Thus, the private sector has a vital interest in the G.A.O. Report and the legislation before this Committee.

We also would urge this Committee to consider seriously the potential for significant legal liability to the Federal Government if a study conducted according to the methodology of the G.A.O. Report is undertaken. The G.A.O. Report assumes that unexplained compensation differences between similar but not equal jobs is evidence of discrimination. While this misstates the law, such a hypothesis would nevertheless be built into a G.A.O. type study. Too, there have been cases such as Segar v. Smith, 738 F.2d 1249 (D.C. Cir. 1984) in which wage disparities have been deemed to prove discrimination. While in Segar the Court used the wage disparity data not to show compensation discrimination but as proof of hiring and classification problems for the U.S. Marshal Service. The G.A.O. methodology and assumptions would, in conjunction with a consultant's report, be used to establish significant liability for the Federal Government.

We would not urge that a study not be done simply because it might result in findings that the government would rather not receive. But we would strongly caution that a study which is flawed in concept and skewed in methodology could well be converted into a document which would be turned against the government. Thus, particular care has to be taken to assure that a study is properly designed and is based on professionally accepted assumptions. Unfortunately, we are a long way from that point.

The Law

The law regarding comparable worth is clear. With the exception of one District Court decision, the Courts have proven to be universally inhospitable to the concept of comparable worth and to its recognition as a theory of liability under Title VII. A lengthy discussion of the legal status of the comparable worth theory is contained in the monograph on Comparable Worth, Sex and Salary, recently published by the ASPA Foundation. That discussion is appended to this testimony. Nevertheless, it would be well to highlight several points from this legal analysis.

The theory of Comparable Worth avoided complete rejection when the Supreme Court, in a narrow five to four decision, interpreted Title VII as allowing inquiries into possible intentional discrimination leading to pay differentials between similar but unequal jobs. The narrowness of the opinion in County of Washington v. Gunther, 452 U.S. 161 (1981), and its specific refusal to adopt the Comparable Worth theory has been noted by almost every commentator. Indeed, even the G.A.O. acknowledges in the appendix to its study that Gunther did not endorse Comparable Worth.

However, the G.A.O. report then misstates the current status of the law. It states after its discussion of Gunther:

> "Federal courts deciding wage inequality cases in the wake of Gunther still expressed different opinions concerning the reach of Title VII. However, most courts restricted their findings of Title VII liability to cases involving evidence of intentional discrimination."

In fact, a review of the cases does not show any diversity of opinion regarding Gunther as the G.A.O. suggests. Rather, there is a remarkable consensus as to what Gunther means, and what the law is: there will be no Title VII liability absent proof of intentional discrimination and intentional discrimination cannot be shown by a mere statistical imbalance between similar but not equal jobs.

Of most importance to this analysis, and probably controlling with regard to the AFSCME case, is the Ninth Circuit opinion in Spaulding v. University of Washington, 740 F.2d 686 (9th Cir. 1984), an opinion which is unmentioned in the body of the G.A.O. Report. Spaulding is relevant for its analysis of comparable worth, and for the fact that it is the law in the Ninth Circuit, where AFSCME will be decided. As the Ninth Circuit there held: "evidence of comparable work, although not necessarily irrelevant in proving discrimination under some alternative theory, will not alone be sufficient to establish a prima facie case.... We will not, therefore, infer [discriminatory] intent merely from the existence of wage differences between jobs that are only similar." The Spaulding court went on to state:

> "We agree with Lemons and Christensen and join those courts in refusing to accept a construction of Title VII allowing the nursing faculty to establish a prima facie violation of that Act whenever employees of different sexes receive disparate compensation for work of differing skills that may, subjectively, be of equal value to the employer, but does not command an equal price in the labor market."

The very fact that the G.A.O. report relied so heavily on the AFSCME District Court opinion and disregarded almost entirely the Ninth Circuit's opinion in Spaulding raises serious doubts about the legal basis of the Report. And Spaulding is not unique. A mere recitation of the courts that have rejected Comparable Worth should serve to illustrate the issue.

8th Cir. Christensen v. State of Iowa, 563 F.2d 353 (8th Cir. 1977)

5th Cir. Plemer v. Parsons-Gilbane, 713 F.2d
1127 (5th Cir. 1983)
10th Cir. Lemons v. City & County of Denver,
620 F.2d 228 (10th Cir. 1980)
D. Mich. Gerlach v. Michigan Bell Co., 501 F.
Supp. 1300 (E.D. Mich. 1980)
D. Mich. Power v. Barry County, Michigan, 539
F. Supp. 721 (W.D. Mich. 1982)
N.D. Ala. Cox v. American Cast Iron Co., 585
F. Supp. 1143 (N.D. Ala., 1984)

And most recently in the American Nurses Association v. State of Illinois decision, Judge Korcoras analyzed in detail the legislative history of Title VII, the Equal Pay Act and the relevant cases and concluded:

> "that unequal pay for jobs alleged to be of comparable worth on the basis of an evaluative study which the employer commissioned but never adopted does not constitute a viable legal theory under Title VII. I base this conclusion on three grounds: Congress' explicit rejection of the theory of comparable worth as documented in the legislative history of the Equal Pay Act and Title VII; the Supreme Court's emphasis on the narrowness of the issue and the holding in Gunther; and this court's judgment that permitting proof of intentional discrimination through studies of comparable worth would be neither workable nor sound.
>
> * * *
>
> "Finally, over and above my judgment that neither the legislative history of Title VII nor the Supreme Court's holding in Gunther authorizes proof of a prima facie case through comparable worth evidence, I am unwilling to expand the limits of Title VII to encompass such a claim. In deciding a comparable worth claim, a court would be compelled either to evaluate the validity of the job evaluation system used by an employer, including any external factors, and then impose a particular wage system on the employer, or in the absence of such a system to determine the relative

> worth of the job in question by a comparison of it to other jobs in the employer's establishment. Such 'standardless supervision' by the courts is, in my judgment, unauthorized and unwarranted."

Judge Korcoras specifically rejected Judge Tanner's reasoning in AFSCME v. State of Washington.

The point to be made here is not simply that there is not the ambiguity in the law regarding Comparable Worth that the G.A.O. suggests. That much is clear. Rather, of particular interest is the many judges, sitting in District Courts and Courts of Appeal throughout the Country who have examined the theory in depth, and have concluded that it is simply not one which is susceptible to adjudication in the courts. Too, no court, even including the AFSCME District Court has endorsed the proposition that statistical differences between the compensation of dissimilar jobs (according to Equal Pay Act standards) is sufficient to show intentional discrimination. It is this message which is absent from the G.A.O. Report, but it is this message which this Committee should heed.

Job Evaluation Systems

Underlying the G.A.O. Report is an assumption that within the multi-faceted world of job evaluation systems there is a methodology by which employers can assure themselves that their evaluation system is in accord with accepted, professionally validated standards. In fact, there is no such methodology. Further, at this stage of its development job evaluation should not be judged by such a test. It has been stated often, but not often enough, that job evaluation is an art, not a science. Job evaluation is simply a means to enable an employer to organize _its own priorities_, and establish a methodology to standardize the wage-setting process so that there can be internal consistency in establishing wages. Indeed, much of the confusion and misleading rhetoric about wage-setting is caused by the fact that instead of speaking of internal _consistency_, proponents of job evaluation use the term internal _equity_. There is a significant difference.

The very subjective nature of job evaluation, where the items to be measured are wholly dependent upon the employer's individual input, requires a great deal of skill and knowledge by the job evaluator, compensation professional and human resources manager to reflect accurately the employer's goals and devise a system to translate those goals into a compensation system. The terminology of "equity," however, implies inherent fairness of intrinsic worth. This is not what job evaluation is meant to achieve.

Because the essence of job evaluation is a skillful articulation of the business goals of individual employers and the personnel skills or traits required for _different_ jobs, job evaluation is inherently subjective. This subjectivity is not something to be condemned. It is reflective of the diversity of the American economy and the different goals and strategies of individual business units. Indeed, it is not an overstatement to attribute the vitality of the American economy to this diversity.

Nor is this subjectivity unique to the private sector. The public sector too has individual priorities and goals that differ among the various governmental entities. Indeed, a study undertaken by the Wisconsin Association of Manufacturers and Commerce makes this point:

> "The chart below compares five common jobs studied in different states and converts their scores to a common scale.
>
> COMPARISON OF JOB WORTH POINTS AS
> A PERCENTAGE OF POINTS ASSIGNED TO ELECTRICIANS

	Wisconsin	Iowa	Minnesota	Washington
Electrician	100	100	100	100
LPN 2	150	124	79	108
Dental Assistant	108	77	50	73
Telephone Operator	91	64	49	60
Data Entry Operator 1	55	72	43	63

> The chart above shows that three states believe Licensed Practical Nurses should be paid more than electricians but Minnesota believes that these nurses should be paid considerably less. In contrast, three states think dental assistants should be paid much less than electricians, while Wisconsin's study claims they should be paid more.
>
> Even in this brief review, some states find the same jobs worth twice as much as other states. These widely divergent results between Wisconsin and other states may surprise some, in view of the proponents' claims that they are using a widely accepted scientific methodology. Any five jobs could have been chosen and they would have illustrated the same basic point: all job evaluations systems are somewhat subjective unless they are tied to the market. There is no universal standard of 'job worth.'"

These differences in the valuation of five jobs by four states should not be surprising. The judgments in each state reflect differing employer values, goals and market pressures. However, a basic point is illuminated: there is no simple accepted methodology for job evaluation, nor can a single result be expected from job evaluation. Indeed, in view of these findings, this Committee must answer a basic question before it proceeds with an "objective" pay equity study of the federal compensation system for the purpose of uncovering latent sex discrimination -- Which of these four States is guilty of discrimination? Is it Minnesota which rates LPNs lower than the others, or Wisconsin which rates Electricians lower than Dental Assistants while the others rank electricians higher? And what will the legal standard be to review these systems? It is easy to make speeches cajoling employers to be "fair" to their employees. It becomes a great deal more complex to translate this notion of "fairness" into practice.

Thus, the G.A.O. Report, and the bill currently before this Committee (see § 4(a)(1), lines 2-4).

The Market

Once we recognize that existing job evaluation systems cannot satisfy the desire for an objective, "neutral" basis for wage-setting, we must face the problem of whose subjective judgments about wages are we willing to accept. It is with this question in mind that the true power and utility of the marketplace comes into full view.

There are no wage dictators in a competitive labor market. Rather, the market involves a never-ending series of agreements about the wages to be paid for particular kinds of work. There is nothing objective about these individual agreements, but the parties involved have had the freedom to make their own subjective decisions. Indeed, it is always interesting to hear organized labor espouse comparable worth when its chosen form of wage-setting -- collective bargaining -- is the most subjective.

When wage rates for particular jobs are the result of the dynamics of the marketplace, the risk of arbitrary decisions is minimized. It is much less likely that a competitive labor market will produce arbitrary results than if a single decision maker sets wage rates in the absence of competitive pressures, whether that individual is an employer, a job evaluator or a public official.

The freedom of the marketplace is far more valuable than the false security of believing that a particular wage rate is "right" or "wrong." However, proponents of comparable worth seek this false security when they ask that wages be set on the basis of current job evaluation methods which exclude the market.

It is impossible to disconnect the market from the wage-setting process. The "worth" of a job is almost totally dependent on the value the economy, employers and employees place on such work, and that value cannot be determined in a vacuum. There is no "intrinsic" worth of a job that can be measured effectively. There are common relationships between positions that are accepted by individual employers, but these too are largely market driven. Indeed, a primary purpose of job evaluation is to assist in identifying these relationships. While the G.A.O. Report acknowledged that the market has a role to play in wage setting, it does so grudgingly and without the full measure of endorsement required. This omission is critical if a study is to be based on the G.A.O.'s suggested methodology. Understanding the importance of market forces is vital to understanding the structural weakness of the Comparable Worth theory. A study of the federal compensation system without a full market analysis would result in a fatally flawed study.

Other Considerations

There are other considerations mitigating against the draft legislation and the G.A.O. Report. The difference in average pay noted by the G.A.O. on page 9 of its report needs to be examined in greater depth. What message does the G.A.O. mean to convey by reporting such data? Basing a major public policy decision on such data would be inappropriate. The G.A.O. compensation data does not distinguish between positions or job groups. Does the G.A.O. intend that GS-14 NASA engineers or NIH computer specialists should not have a higher salary as compared to NASA or NIH GS-5 secretaries? Clearly not. Yet, the G.A.O. cites this general data, as well as the data indicating male-female dispersion among the various GS levels, as support for a study of sex discrimination in the federal wage structure. This data does not support a comparable worth study.

The only information conveyed by the data is that there is apparent sex predominance in certain occupational series. Wouldn't it be appropriate to examine the causes of that phenomena? A new examination of Federal compliance with accepted equal employment principles may well be called for and ASPA would support such an effort. To suggest, however, that investigating or changing the federal compensation system as a means of obviating the impact of career choices or hiring and promotion practices is treating the symptom and not the cause. There would be no structural improvement from such a wage adjustment. Nor does the G.A.O. data indicate how such crucial factors as vacancy rates, unfilled job requisition and the like were affected by the current federal wage system. Without this data, there simply is no proper basis on which to undertake any compensation study.

Nor does the G.A.O. indicate how a "pay equity" study will deal with merit. As the push behind merit-based pay systems becomes more pronounced, both in the private sector and the public sector, the impact and utility of broad-based job evaluation systems becomes critical. The case law is clear that an employer can pay more to an individual because of his or her merit or special characteristics. The First Circuit made this point clearly in its decision in Winkes v. Brown University, 747 F.2d 792 (1st Cir. 1984), where it upheld a salary differential paid to a female faculty member because of her special achievements, skills and professional recognition even though she was performing the same job as her male counterpart. How would such considerations be measured on the G.A.O. charts? And how would the G.A.O. have the value judgments inherent in merit determinations incorporated in a mechanistic "objective" wage computation?

Pending Legislation

We would note that the legislation now pending in the House on this issue, H.R. 3008, as well as S. 519, incorporates the faults of the G.A.O. Report without question.

For example, H.R. 3008 as currently drafted would have the compensation consultant reach a conclusion that "unexplained" differences in compensation among identified sexual, social or ethnic groups for jobs which "were equivalent in totality" would indicate unlawful compensation practices. While the extraordinary vagueness of the term "equivalent in totality" should give pause, a deeper concern is the fact that there is absolutely no support in statute or case law for the proposition that such a difference in and of itself equates to discrimination. Further, as noted earlier, in light of reported cases such as Segar v. Smith, 738

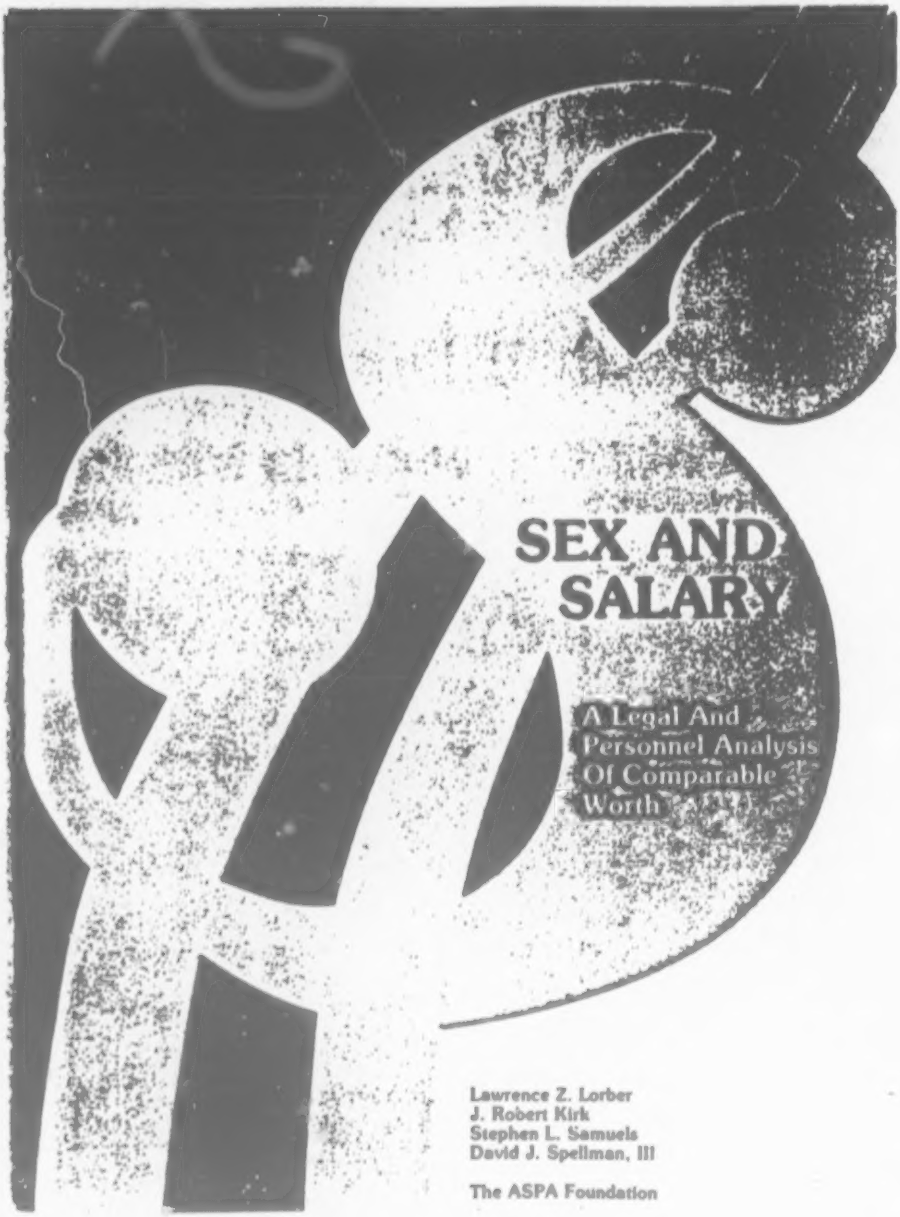
F.2d 1249 (D.C. Cir. 1984), the Committee should be extremely wary of the possible significant liability to the Federal Government of commissioning a private compensation consultant to find it guilty of discrimination. While S. 519 appropriately does not contain this erroneous assumption of discrimination, it too would compare jobs "equivalent in totality."

There are many other questions and considerations to be raised. It is obvious, however, that this Committee is considering legislation which may well lead to dramatic and drastic changes in our compensation and human resource management systems based on a report lacking in understanding of the basic components of compensation and human resources management.

As the ASPA Foundation study of comparable worth concluded:

> Like many new ideas which promise dramatic change at low cost, "comparable worth" has become one of the most talked about, and least understood, social issues of the 1980s. Rather than deal with the difficult, if not intractible practical and legal problems full adherence to a "comparable worth" compensation system would raise, proponents tend to sell it as the magic elixir which will cure all ills. Clearly, "comparable worth" cannot live up to that billing.

We believe that this Committee should examine these critical issues in detail before it asks the Congress to authorize a "study" in any form. Because it is not merely a "study" which is being authorized, but rather a fundamental change in the manner in which we award economic incentives and structure our business and personnel strategies.



SEX AND SALARY

A Legal And Personnel Analysis Of Comparable Worth

Lawrence Z. Lorber
J. Robert Kirk
Stephen L. Samuels
David J. Spellman, III

The ASPA Foundation

Chapter 4
An Analysis of Pay Equity Legislation and Litigation

The pay equity movement in the United States is active on several fronts.

Historically, the development of pay equity issues has been most dramatic in the context of federal legislation. Beginning with the experience of the National War Labor Board during World War II and continuing through the enactment of the Equal Pay Act in 1963 and Title VII of the Civil Rights Act in 1964, the focus of pay equity proponents was on the United States Congress. The issues lay relatively dormant, however, for the next 15 years. Now, pay equity activity is once again percolating on the national legislative front.

Even greater activity is presently taking place in state legislatures. Several states have enacted wage discrimination legislation that goes substantially further than federal laws. An even larger number of states have recently undertaken studies to determine the extent of possible sex-based wage discrimination in public sector employment.

While the judicial arena receives much attention from the media, lawsuits involving pay equity issues are actually marked by the extreme reluctance of the courts to expand pay equity to cover the concept of equal pay for "equal worth." Courts have repeatedly rejected wage discrimination claims based solely upon a comparison of the difficulty or value of jobs that are otherwise dissimilar. Nevertheless, the courts still constitute a popular forum for the airing of many pay equity disputes.

The political arena is also quite active. Due to the increasing political power of women in this country, issues of particular interest to women — including pay equity — have become hot subjects of political debate. Indeed, the recent presidential campaign saw pay equity transformed from an esoteric topic discussed by feminists and labor specialists into a national issue that both political parties thought important enough to address in their national party platforms.

Another forum for pay equity activity is collective bargaining. In recent years, women in sex-segregated jobs have exhibited an increasing tendency to organize. Their unions have taken an aggressive role in promoting pay equity concepts through collective bargaining. Some impasses have resulted in strikes, which, in turn, have served to heighten public awareness of pay equity issues. Nevertheless, the attitude of the labor movement overall toward pay equity issues and to job evaluations has to be characterized as ambivalent, at best.

In this chapter, we will examine in detail the past, present, and future of pay equity issues in the legislative and judicial arenas. Because collective bargaining is an area of particular importance for the possible development of pay equity concepts, and because collective bargaining has heretofore received relatively little attention, that subject will be examined separately in Chapter Five.

Legislation

National War Labor Board

The underpinnings of pay equity in the United States can be found in the operations of the National War Labor Board (NWLB), which was created by Executive Order during World War II to serve as a final arbiter of salary disputes between labor and management.

In 1942, the NWLB issued an order calling for salary adjustments to "equalize the wage or salary rate paid to females with rates paid to males for comparable quality and quantity of work on the same or similar operations."[1] In its application of this standard to specific cases, the NWLB emphasized that the standard did not require it to evaluate the worth of work that was different in nature. Rather, the NWLB examined the wages paid to men and women who did *similar* work and required that their wages be equal if the quality and quantity of their output was comparable.[2] In terms of the four types of pay equity concepts described in Chapter 2, the NWLB standard most closely resembles the "equal pay for similar work" approach.

The Equal Pay Act

Based upon the experiences of the NWLB, a bill requiring "equal pay for comparable work" performed by males and females was introduced in Congress in 1945. The bill was not enacted that year, and similar bills were rejected in each session of Congress over the next 17 years.

In 1962, equal pay legislation was again considered by Congress. A bill introduced in the House of Representatives would have prohibited employers from discriminating on the basis of sex by paying different wages "for work of *comparable* character on jobs the performance of which requires *comparable* skills."[3] In committee hearings on the bill, spokesmen for the Kennedy Administration claimed that the comparability of different jobs could be determined by using job evaluations.[4] When the bill reached the floor of the House, however, it was amended to provide for equal pay only for *equal* work on jobs, the performance of which requires "*equal* skills."[5] That bill eventually died in Conference Committee. However, a similar bill was reintroduced in 1963. In explaining the reasons for the amendment adopted in the previous session that changed the language of the bill from "comperable work" to "equal work," Representative Goodell stated:

> Last year when the house changed the word "comperable" to "equal" the clear intention was to narrow the whole concept. We went from "comperable" to "equal" meaning that the jobs involved should be virtually identical, that is, that they would be very much alike or closely related to each other.
>
> We do not expect the Labor Department to go into an establishment and attempt to rate jobs that are not equal. We do not want to hear the Department say, "Well, they amount to the same thing," and evaluate them so that they come up with the same skill or point. We expect this to apply only to jobs that are substantially identical or equal.[6]

This bill was passed by both Houses of Congress. As finally enacted, the Equal Pay Act provides:

> No employer [covered by the minimum wage laws] shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any factor other than sex...

In plain talk, the Equal Pay Act requires employers to pay equal wages to men and women for work that is substantially equal, unless the employer can affirmatively prove that a wage differential is based upon seniority, merit, quantity or quality of production, or any other factor other than sex.

Title VII

The legislative history of the Equal Pay Act is important because it assists in explaining the intent of legislation that was introduced just nine days after the Equal Pay Act became law. That legislation was Title VII of the Civil Rights Act of 1964.

The primary purpose of Title VII was to prohibit discrimination by employers on the basis of race, color, religion, or national origin in the hiring, firing, training, compensation, or promotion of employees. As originally proposed and during the course of committee hearings on the bill, Title VII did not refer to sex discrimination. On the last day of debate in the House of Representatives, however, Congressman Howard Smith of Virginia proposed an amendment to Title VII to add sex as a prohibited basis of discrimination. Since Congressman Smith was an opponent of the Civil Rights Act, it is commonly believed that his amendment was intended to ensure that the legislation would be defeated. Indeed, his amendment was opposed by several staunch supporters of the bill. Nevertheless, the Smith Amendment was adopted by the House of Respresentatives on the same afternoon it was proposed by vote a of 168 to 133.

At no time did the House attempt to explain the relationship between the Equal Pay Act, which required equal pay for equal work with certain express exceptions, and Title VII, which would prohibit sex discrimination in the compensation of employees.

That question assumed greater significance when Title VII reached the Senate. In an effort to rationalize Title VII with the Equal Pay Act, the Senate adopted an amendment offered by Senator Bennett. The Bennett Amendment, which was also subsequently accepted by the House, provides:

> It shall not be an unlawful employment practice under [Title VII] for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid to employees of such employer if such differentiation is *authorized* by the provisions of [the Equal Pay Act].

While the Bennett Amendment was intended to clarify the interrelationship of the Equal Pay Act and Title VII, it too created confusion. Two theories regarding the scope of the Bennett Amendment developed, each taking a widely different view as to what acts are "authorized" by the Equal Pay Act.

Advocates of one theory maintained that the Bennett Amendment means that a practice that is not prohibited by the Equal Pay Act also is not prohibited by Title VII. Under this view, since the Equal Pay Act does not address the question of wage discrimination with respect to jobs that are not substantially equal, Title VII would also apply only to substantially equal work.

Advocates of the other theory maintained that the Bennett Amendment was intended to incorporate only the affirmative defenses of the Equal Pay Act into Title VII. Those affirmative defenses, as discussed above, involve seniority systems, merit systems, systems that measure earnings by quantity or quality of production, and other factors other than sex that explain a wage differential. Under this theory of the Bennett Amendment, a legal claim for wage discrimination can exist under Title VII even where the jobs being compared are *not* substantially equal, although the employer still has the opportunity to defend against such a claim on the basis of the four defenses outlined in the Equal Pay Act.

The dispute over whether Title VII's prohibition of sex-based wage discrimination was limited to equal work was not resolved by the legislative history of the Bennett Amendment. Proponents of both theories were able to cite passages in the legislative record that supported their respective positions.

The courts that eventually considered the scope of the Bennett Amendment came out on both sides of the issue. The question was not finally resolved until 1981 when the Supreme Court issued its landmark decision in *County of Washington v. Gunther*.[7] We will discuss that decision in detail later in this chapter, but for present purposes it is sufficient to note that the Supreme Court adopted the second theory of the Bennett Amendment. The Court held that a plaintiff need not prove equal work in order to state a wage discrimination claim under Title VII. What has to be proven in order to *prevail* in a Title VII action, however, is still very much up in the air, a point to which we will return later.

There has been an increasing amount of pay equity activity in Congress in the recent past. For example, in the 1984 session of Congress, bills were introduced that would have mandated a comparable worth study within the federal pay system, required federal agencies to make periodic reports on actions taken to enforce wage discrimination laws, and required pay equity actions within the legislative branch. While none of these bills was enacted, it is anticipated that pay equity proposals will receive serious consideration by Congress in 1985.

State Legislation

As described above, both the Equal Pay Act and Title VII regulate the compensation paid by employers to their workers. These statutes clearly require that male and female workers in jobs that are substantially equal be paid equal wages, unless the employer can demonstrate that a wage differential is based upon a seniority system, a merit system, a system that measures quality or quantity of production, or any other factor other than sex. How far beyond the concept of equal pay for equal work Title VII might extend is an area of active dispute that will occupy a significant portion of this chapter.

But besides these two federal laws, legislation enacted by the states might also affect compensation decisions made by employers. In some instances, the language of these state statutes is broader than the language of the Equal Pay Act and Title VII.[8] Moreover, some of these state statutes include employers that are not covered by the Equal Pay Act or Title VII.

Three states — Minnesota, Washington and New Jersey — have gone so far as to enact "equal worth" legislation applicable to public sector employees. These laws require that pay to state employees be adjusted to reflect the actual "worth" of their jobs.

In addition, 12 states have enacted equal pay legislation that incorporates a "similar work" concept. These laws generally apply to private as well as public employers. The laws of six of these states (Idaho, Kentucky, Maine, North Dakota, Oklahoma, and South Dakota) refer to jobs that have "comparable requirements." Five state statutes (Alaska, Maryland, Massachusetts, Oregon and West Virginia) refer to "work of comparable character," and one statute (Tennessee) refers to "comparable work."

In six other states (California, Georgia, Hawaii, Iowa, Montana, and Nebraska), legislatures have passed resolutions providing that it is the "policy" of the state that employers should pay workers on the basis of their "worth" or "value." Three of these resolutions (California, Iowa and Montana) are limited to public employers and three (Georgia, Hawaii and Nebraska) apply to the private sector as well.

Bills that would broaden the scope of existing equal pay statutes were pending in four states (California, Illinois, New York and Pennsylvania) in 1984.

It should be noted that most of these state statutes include affirmative defenses that are identical or similar to the defenses set forth in the Equal Pay Act and applicable to Title VII through the Bennett Amendment.

Despite the apparent broader scope of some state equal pay provisions, few lawsuits have been filed that are based upon these state statutes. This situation is likely to change, however, if federal courts continue to construe Title VII narrowly in the context of "similar work" and "equal worth" actions.

In addition to the wage discrimination statutes discussed above, 24 states (Alaska, California, Connecticut, Hawaii, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, North Carolina, Ohio, Oregon, Rhode Island, Vermont, Virginia, Wisconsin, and West Virginia) have undertaken formal studies of pay equity issues as a result of legislation, executive orders, or collective bargaining agreements. Studies have been proposed in four other states (Florida, Illinois, New Hampshire, and Pennsylvania). Pay equity studies in two states (Iowa and Minnesota) have been completed and are now being implemented. All except three of these studies (Alaska, California, and Pennsylvania) are limited to public sector employment.

There is also evidence that a substantial number of county and municipal governments have undertaken various types of pay equity studies. Some have actually adopted ordinances imposing "comparable worth" requirements.[9]

Litigation

The Traditional Approach to Wage Discrimination Claims

The traditional manner in which federal courts have dealt with Equal Pay Act and Title VII claims serves as useful background for later cases that involve "comparable worth" issues.

The Equal Pay Act, of course, requires equal pay for men and women doing equal work. A plaintiff bringing a lawsuit under the Equal Pay Act must initially show that she (we will assume the plaintiff is a female, although men can also sue under the Act) is paid less than a man for doing substantially equal work. To meet this burden, she must demonstrate that the jobs held by her and her male counterpart require substantially equal skill, effort, and responsibility and are performed under similar working conditions. Once the plaintiff has made this initial showing of unequal pay for substantially equal work — known as a "prima facie" case — the burden shifts to the employer to prove that the difference in wages is based upon a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or any other factor other than sex. The burden on the employer is a substantial one; the employer must affirmatively prove that the wage disparity is justified by one of the four exceptions set forth in the Equal Pay Act.

Traditionally, a case brought under Title VII has involved a somewhat different distribution of burdens. As previously discussed, Title VII makes it unlawful to discriminate against a member of a protected class, including women, with respect to any term or condition of their employment, including compensation. Since Title VII is so broad in its coverage, a substantial body of law has developed outside the area of wage discrimination. The courts have permitted two general types of employment discrimination claims under Title VII, one called "disparate treatment" and the other called "disparate impact." Under a "disparate treatment" theory of sex discrimination, a plaintiff must prove that an employer intentionally discriminated against her because of her sex. This burden is different from the burden in an Equal Pay Act claim, where the employer's intent to discriminate need not be proven. In order to establish a "prima facie" case of sex discrimination under a disparate treatment theory, the plaintiff must prove facts that support an inference of intentional discrimination. In order to do this, the plaintiff must present evidence of "actions taken by the employer from which [the court can] infer discriminatory animus because experience has proven that in the absence of any other explanation, it is more likely than not that those actions were bottomed on impermissible considerations."[10] While the burden of establishing a prima facie case is said to be "not onerous,"[11] the plaintiff must nevertheless present direct or circumstantial proof of the employer's discriminatory motive.

Once the plaintiff establishes a prima facie case of discrimination, the employer in a disparate treatment case must articulate some legitimate, nondiscriminatory reason that justifies the practice being challenged. Unlike an Equal Pay Act defense, which must be proven affirmatively by the employer, a defendant in a disparate treatment case need only produce some evidence that there was a legitimate basis for the employer's acion.

If the defendent successfully rebuts the prima facie case of discrimination by articulating a reason for the difference in pay, the burden shifts back to the plaintiff to prove that the employer's explanation is a "pretext" for discrimination.[12] This can be done by proving that a discriminatory reason more likely motivated the employer or that the employer's explanation for the action taken should not be believed.

Whereas disparate treatment deals with intentional discrimination by an employer, "disparate impact" is concerned with employers' practices that are fair in form but discriminatory in operation. This approach to discrimination grew out of a case involving the use of a general intelligence test by an employer to select employees. Since the test had a disparate impact on minority candidates and since the intelligence test was not "job-related" — that is, it did not measure any skills related to the performance of the work involved — the Supreme Court held in *Griggs v. Duke Power Co.* that the employer could not use the test to screen applicants.[13]

Under a disparate impact theory, a plaintiff must prove that a practice of the employer that is neutral on its face has a discriminatory impact on a group protected by Title VII. The burden then shifts to the employer to prove that the facially neutral policy is justified by business necessity.[14]

The principal difference between a disparate treatment claim and a disparate impact claim under Title VII is that disparate impact does not require a plaintiff to prove intent to discriminate on the part of the employer. However, in some respects the burden on the plaintiff in establishing a prima facie case of disparate impact is somewhat greater than in a disparate treatment case. For example, one court has stated that the plaintiff must actually demonstrate the discriminatory impact of the facially neutral practice rather than merely show circumstances raising an inference of discriminatory impact.[15]

It is apparent, then, that the type of action brought by a plaintiff determines to a large extent the type of showing that must be made by both parties. Whereas a plaintiff bringing an action under the Equal Pay Act need not prove that the employer intended to discriminate on the basis of sex (although she might be entitled to greater damages if she does proves intentional discrimination), she must show that the employer paid different wages to males and females for jobs that are substantially equal. In a disparate treatment claim, the plaintiff must ultimately prove intentional discrimination, either through direct or circumstantial evidence. And in a disparate impact action, the plaintiff must prove the discriminatory impact of a facially neutral policy.

The employer also faces different burdens in refuting a prima facie case of discrimination depending upon the type of theory advanced by the plaintiff. In an Equal Pay Act case, the employer must affirmatively prove that the pay disparity was based on some factor other than sex. In a disparate treatment action, the employer need only articulate a legitimate reason for its action, after which the burden shifts back to the plaintiff to prove that the articulated reason is pretextual. And in a disparate impact case, the employer must demonstrate that the challenged action was based upon business necessity.

Not surprisingly, these different standards and burdens greatly affect the success or failure of a wage discrimination action. Thus, the question of which basis for a wage discrimination action pertains to the circumstances of a particular case assumes great importance.

Clearly, where a wage discrimination claim is based upon an allegation of different pay for jobs that are substantially equal, the standards and burdens of the Equal Pay Act apply. While theoretically a disparate treatment claim under Title VII could also be pursued even where the jobs are equal, a plaintiff is most likely to proceed under the Equal Pay Act since intentional discrimination need not be proven and since the defendant's burden after a prima facie case is established is greater under the Equal Pay Act.

The real controversy has occurred in the context of male and female jobs that are *not* substantially equal in terms of skill, effort, responsibility, and working conditions. In the remainder of this chapter, our principal focus shall be on the past, present, and future of pay equity claims involving work that is not substantially equal under the standards of the Equal Pay Act.

Pay Equity Case Law Prior to Gunther

The major unresolved issue prior to the Supreme Court's decision in *County of Washington* v. *Gunther* was whether a proper wage discrimination claim could even be brought with respect to jobs that are not substantially equal. Of course, if all claims involving unequal jobs were outside the scope of both the Equal Pay Act and Title VII, then the "similar work," "equal worth," and "pay parity" theories of pay equity would all be dead. On the other hand, if a claim based on unequal work could be brought, the question remained as to what types of facts would establish a prima facie case of sex discrimination and what facts presented by the employer could overcome a prima facie case.

In *Gunther*, the Supreme Court resolved the first issue by deciding 5-4 that jobs need not be substantially equal for a wage discrimination claim to proceed under Title VII. Before exploring the second issue relating to the evidence that can establish a successful claim under Title VII, it is useful to examine cases prior to *Gunther* that addressed the merits of sex discrimination claims involving unequal work.

The pay equity theory of "equal worth" was rejected in early Title VII cases. In *Christensen* v. *State of Iowa,*[16] female clerical employees at the University of Northern Iowa (UNI) brought an action in which they contended that Title VII prohibited UNI's practice of paying clerical workers, who were exclusively female, less than physical plant workers, who were predominately male. UNI had instituted a pay scheme under which compensation was determined on the basis of each job's relative worth, as measured under a Hay System points rating, and the length of an individual employee's service. UNI originally intended to disregard the market value of the rated positions in determining compensation. However, upon discovering that the local labor market paid higher wages for physical plant workers than would be paid under the study, UNI increased the beginning pay for these employees. As a result, UNI paid physical plant employees more than clerical employees despite equivalent seniority and "equal worth" as measured by UNI's job evaluation.

The clerical employees brought suit against UNI, alleging disparate treatment under Title VII. The district court in Iowa rejected the claim and the clerical workers appealed. The Eighth Circuit Court of Appeals affirmed the district court decision, holding that the clerical employees had failed to allege facts showing that they had been victims of intentional discrimination. In reaching this conclusion, the Court of Appeals relied on evidence showing that UNI paid higher wages to plant workers because of the local labor market. The Court noted that the value of a job to the employer is just one factor affecting wages; other factors may include the supply of willing workers in the market and the ability of workers to bargain collectively for higher wages.

The *Christensen* court concluded: "We find nothing in the text and history of Title VII suggesting that Congress intended to abrogate the laws of supply and demand or other economic principles that determine wage rates for various kinds of work. We do not interpret Title VII as requiring an employer to ignore the market in setting wage rates for genuinely different work classifications."[17]

Another legal proceeding that raised the "equal worth" issue prior to *Gunther* involved a group of nurses who sued the City of Denver for adopting a classification and pay plan that they argued discriminated on the basis of sex. In *Lemons* v. *City and County of Denver,*[18] the City of Denver compensated nurses and other public employees on the basis of the market rates for those workers in the community as a whole. The nurses maintained that these market rates reflected a history of sex discrimination and that Title VII prohibited the perpetuation of that discrimination. The nurses claimed that they should be paid at the same level as other municipal employees who did work dissimilar to nursing but of "equal worth" to the employer.

In affirming the district court's decision in favor of the City of Denver, the Tenth Circuit Court of Appeals held that Title VII was not intended to address the type of pay disparity presented by the nurses. The court stated that courts "cannot require the City within its employment to reassess the worth of services in each position in relation to all others, and to strike a new balance and relationship."[19] The Court quoted from the *Christensen* case for the proposition that Title VII does not require an employer to ignore the market in setting wages for different kinds of work.

In *Gerlach* v. *Michigan Bell Telephone Company,*[20] female engineering layout clerks filed a wage discrimination claim in which they alleged that their employer, Michigan Bell Telephone Company, paid them less than their true value in comparison to men in certain craft classifications. With respect to the clerks' claim that their jobs were undervalued vis-a-vis a dissimilar job classification, the court held that an independent cause of action could not be maintained "based on a theory solely relating to comparable worth and under-valuation."[21] The court held that while the relative worth of a job might be relevant evidence under a theory of intentional discrimination, "standing alone it will not establish a cause of action for sex-based discrimination...I cannot conclude at this point in time that Congress has authorized the courts to undertake an evaluation and determination of the relative worth of employees."[22]

In *International Union of Electrical, Radio and Machine Workers v. Westinghouse Electric Corporation*,[23] female employees of Westinghouse brought a claim alleging that the company deliberately set lower wage rates for job classifications filled predominately by women than the wage rates for jobs filled mostly by men. The plaintiffs asserted that in the late 1930s Westinghouse separated its employees into "male" jobs and "female" jobs. After conducting a job evaluation study comparing the "worth" of different jobs, Westinghouse then assigned lower salaries to female jobs that received the same point ratings as male jobs. In 1965 the company eliminated the designation of jobs as "male" or "female", but, according to the plaintiffs, adopted a new wage scale that embodied the deliberately discriminatory policy of the prior plan.

The district court dismissed the lawsuit against Westinghouse on the basis that Title VII prohibited sex-based wage discrimination only with respect to work that was substantially equal. The Third Circuit Court of Appeals reversed and remanded the case to the district court for a decision on the merits of the female workers' claim. However, the case was settled before it came to trial.

In a case decided just two months before the Supreme Court's decision in *Gunther*, a district court in Pennsylvania awarded damages to female employees based upon intentional sex discrimination by their employer. In *Taylor v. Charley Brothers Company*,[24] the court found that the employer had intentionally discriminated against women by segregating them into a lower paying "female department" where they performed work equal or similar to that performed by men in another department. With respect to jobs in the two departments that were not equal but required similar skill, education, experience, and responsibility, the court concluded that the difference in wages paid to men and women could not be justified by minor variations in the content of their jobs. The court relied on a job evaluation commissioned by the female workers to conclude that women performing work similar but not equal to that of the men should be paid 90 percent as much.

Probably the most significant decision involving pay equity prior to the Supreme Court's decision in *Gunther* was the Ninth Circuit Court of Appeals' treatment of that same case.[25] The plaintiffs in *Gunther* were four women employed as "jail matrons" by Washington County, Oregon. These matrons guarded inmates in the female section of the county jail; males guarded inmates in the male section and were paid at a higher rate. In their lawsuit, the female matrons claimed that they were paid less for work substantially equal to that done by the male guards, and even if the work was not substantially equal, the wage differential was attributable to sex discrimination. The district court found that the matrons' jobs did not require substantially equal effort or responsibility as the jobs of the male guards and therefore dismissed the lawsuit.

On appeal, the Ninth Circuit agreed with the district court's finding that the jobs held by the men and women were not substantially equal and that therefore the matrons could not recover under the standards of the Equal Pay Act. However, the Court went on to conclude that the matrons were not precluded from suing under Title VII just because the jobs were not substantially equal. The Court held that the district court should have considered evidence that a portion of the discrepancy between the salaries paid to the female matrons and the male guards could be ascribed to sex discrimination.

The Ninth Circuit emphasized the narrowness of its decision and specifically rejected a "pure" equal worth theory of pay equity. The Court stated that a Title VII plaintiff claiming wage discrimination could not state a proper claim simply by comparing the work done by men and women unless she demonstrated that the job requirements were substantially equal. Evidence of the comparability of dissimilar jobs, "although not necessarily irrelevant in proving discrimination under some alternative theory, will not alone be sufficient to establish a prima facie case," the Court held.[26]

With this background in mind, we turn now to a discussion of the Supreme Court's decision in *Gunther*.

County of Washington v. Gunther

The single issue before the Supreme Court in *Gunther* was whether a sex-based wage discrimination claim could be maintained under Title VII with respect to jobs that were not substantially equal. The strict legal queston was whether the Bennett Amendment limited Title VII's prohibition of sex-based wage discrimination only to situations where men and women did equal work.

As previously described, the Bennett Amendment provides that wage differentials "authorized" by the Equal Pay Act are not unlawful under Title VII. In *Gunther*, the Court had to decide whether the Equal Pay Act "authorized" all pay differentials for any jobs that are not equal or only those pay differentials that are based on one of the four defenses stated in the Equal Pay Act, that is, a seniority system, a merit system, a system for measuring quality or quantity of production, or any factor other than sex.

By a 5 to 4 margin, the Supreme Court adopted the narrower view of the Bennett Amendment and held that a claim of discriminatory compensation is not barred under Title VII merely because the work being compared is not equal. What is most revealing about *Gunther*, however, is the lengths to which the Supreme Court went to narrow the scope of its decision.

The majority opinion in *Gunther* articulated what was not being decided more than what was. The majority stated:

> We emphasize at the outset the narrowness of the queston before us in this case. *Respondents' claim is not based on the controversial concept of "comparable worth," under which plaintiff might claim increased compensation on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community. Rather, respondents seek to prove, by direct evidence, that their wages were depressed because of intentional sex discrimination*, consisting of setting the wage scale level lower than its own survey of outside markets and the worth of the jobs warranted.[27]

The majority reiterated this point at the end of the opinion:

> Petitioners argue strenuously that the approach of the Court of Appeals places "the pay structure of virtually every employer and the entire economy...at risk and subject to scrutiny by the federal courts." They raise the specter that "Title VII plaintiffs could draw any type of comparison imaginable concerning job duties and pay between any job predominately performed by women and any job predominately performed by men." But whatever the merit of petitioners' arguments in other contexts, they are inapplicable here, for claims based on the type of job comparisons petitioners describe are manifestly different from respondents' claim. Respondents claim that the County of Washington evaluated the worth of their jobs; that the county determined that they should be paid approximately 95 percent as much as the male correctional officers; that it paid them only about 70 percent as much, while paying the male officers the full evaluated worth of their jobs; and that the failure of the county to pay respondents the full evaluated worth of their jobs can be proved to be attributable to intentional sex discrimination. *Thus, respondents' suit does not require a court to make its own subjective assessment of the value of the male and female guard jobs, or to attempt by statistical technique or other method to quantify the effect of sex discrimination on the wage rates.*[28]

The dissenters in *Gunther* found some solace in the narrowness of the majority opinion:

> Even though today's opinion reaches what I believe to be the wrong result, its narrow holding is perhaps its saving feature. The opinion does not endorse the so-called "comparable worth" theory: though the Court does not indicate how a plaintiff might establish a prima facie case under Title VII, the Court does suggest that allegations of unequal pay for unequal, but comparable, work will not state a claim on which relief may be granted...
>
> Because there are no logical underpinnings to the Court's opinion, all we may conclude is that even absent a showing of equal work, there is a cause of action under Title VII where there is direct evidence that an employer has *intentionally* depressed a woman's salary because she is a woman. The decision today does not approve a cause of action based on a comparison of the wage rates of dissimilar jobs.[29]

What is the significance of the Supreme Court's opinion in *Gunther*? A shift of just one vote from the majority view to the minority would have meant that no wage discrimination claim involving unequal work could be brought before a court. This would have sounded the death knell of the "similar work," "equal worth," and "pay parity" theories of pay equity since all three theories are based upon the comparison of work that is not substantially equal. But while the Supreme Court did not completely shut and dead-bolt the door on these theories, neither did it leave the door open more than a crack.

The Supreme Court leaned over backwards to explain that *Gunther* was not a "comparable worth" case in order to distinguish the facts in *Gunther* from the facts of a pure "comparable worth" claim, the Court explained that *Gunther* did not require the Court to make a subjective analysis of the value of dissimilar jobs or to quantify through statistics the effect of sex discrimination on wage rates. Instead, the Court stated, the female matrons contended they could prove intentional discrimination by direct evidence consisting of the County's own evaluation of the worth of their jobs and the County's subsequent disregard of that evaluation in its determination of wages for the women jail matrons. Of course, the emphasis on evidence of intentional discrimination is no different from the type of showing required under a disparate treatment theory of discrimination in a traditional Title VII lawsuit.

To be sure, the Supreme Court did not specifically hold that a Title VII action can *never* succeed on a theory of equal worth. However, the fact that the majority went to such ends to disassociate itself from the theory of "comparable worth" certainly implies that for all practical purposes the pristine form of the theory — where a sex-based wage discrimination claim is based *solely* upon a comparison of the value or difficulty of dissimilar jobs — is simply outside the reach of existing law.

This conclusion is supported by the way the Court distinguished the decision in *Lemons v. City and County of Denver*, discussed above. In *Lemons*, the Tenth Circuit Court of Appeals had held that Title VII did not provide a remedy to nurses who said that their jobs were worth the same as certain higher-paying male-dominated jobs. The Supreme Court noted in *Gunther* that *Lemons* did not involve "direct proof of intentional discrimination."[30]

The direct proof of intentional discrimination in *Gunther*, according to the majority, involved allegations by the matrons that the County of Washington had evaluated the worth of their jobs, that the county determined that the matrons should be paid 95 percent as much as male guards, that the county paid them only 70 percent as much while paying the males their full evaluated worth, and that the failure of the county to pay males and females the same proportion of their evaluated worth was attributable to intentional sex discrimination. The Court's recitation of these allegations conjures up an image of the County of Washington conducting a formal job evaluation of county jobs, assigning a dollar value to each of those jobs, and then implementing the survey with respect to the male guards and ignoring it or implementing it only partially with respect to the female jail matrons.

It appears, however, that the Court's recitation of the matrons' allegations of intentional discrimination — which apparently was not based upon any direct evidence in the record — was actually an exaggerated interpretation of certain "facts" intended to distinguish the *Gunther* action from a pure "comparable worth" claim in order to obtain enough votes for a majority. Indeed, the district court and Court of Appeals decisions in *Gunther* never referred to an evaluation of the relative worth of the jobs of female jail matrons and male prison guards. And, in fact, the County of Washington never did conduct a formal evaluation of these jobs.[31]

Nevertheless, *Gunther* does mean that a sex-based wage discrimination claim involving unequal jobs can be brought under Title VII. What more *Gunther* stands for is subject to wide debate. The Court gave no indication as to what type of evidence would establish a prima facie case of sex discrimination in situations involving unequal work. And the Court did not discuss how it would treat any of the wide-ranging defenses that are available to employers under the Bennett Amendment once a prima facie case is established. The *Gunther* opinion's emphasis on "intentional" discrimination suggests that a Title VII pay equity claim must proceed upon a disparate treatment theory, but the Court did not specifically rule out a disparate impact approach.

All the questions that were left unanswered in *Gunther* lend greater importance to subsequent court decisions involving pay equity issues. As we shall see, these cases have begun to define the parameter of pay equity claims, but many gaps remain to be filled.

Pay Equity Decisions After Gunther

Pay equity cases after *Guther* have forced district and appellate courts to address many of the issues that were left open by the Supreme Court. For the most part, these courts have focused on the restrictive language in *Gunther* in holding that a sex-based wage discrimination claim involving work that is not equal can succeed only if intentional discrimination on the part of the employer can be proven. In this context, courts have examined the culpability of specific actions by an employer and some courts have even been willing to examine the similarity of jobs as evidence of the discriminatory animus of the employer. However, no court has found a Title VII violation simply on the basis of after-the-fact evidence that work done by men and women was of equal difficulty or value. In this section, we shall examine the post-*Gunther* cases as they relate to each of the theories of pay equity defined in Chapter Two.

Equal Pay for Equal Work

Gunther had no effect on pay equity cases involving equal work. Accordingly, where jobs require substantially equal skill, effort, and responsibility and are performed under similar working conditions, employers must pay equal wages to male and female employees, except for wage differentials that are based upon a seniority system, a merit system, a system that measures earnings by quality or quantity of production, or any other factor other than sex. These standards apply whether a claim is brought under the Equal Pay Act or under Title VII. In *Kouba v. Allstate Insurance Company*,[32] the Ninth Circuit Court of Appeals held that whichever statute forms the basis for an equal work claim, once a prima facie case of unequal pay for equal work is established, the employer bears the burden of proving that the wage differential was based upon a factor other than sex.

Lanegan-Grimm v. Library Association of Portland[33] involved the sex-segregated positions of "bookmobile driver/clerk," held only by women, and "delivery truck driver," held only by men. The district court for Oregon compared the two positions in terms of the skill, effort, responsibility, and working conditions involved, and concluded that the two jobs were substantially equal with respect to each factor. Since delivery truck drivers were paid at a higher rate than bookmobile driver/clerks, the court concluded that a female bookmobile driver had established a prima facie case of sex discrimination. The only defense offered by the Library Association was that the wage differential was established by union contract. The court rejected this defense, citing a case that held that unions cannot usurp an employee's statutory right to equal pay for equal work.

The court in *Lanegan-Grimm* also concluded that the plaintiff could prevail on a theory of intentional discrimination based on the facts existing in that case. However, where jobs are found to be equal, it will always be easier for a plaintiff to prevail under the Equal Pay Act standards, which do not require proof of the employer's intent to discriminate, than under a theory of intentional discrimination. The latter theory, however, can be used in situations where jobs are not substantially equal, a matter to which we will return.

Equal Pay for Similar Work

Under a theory of equal pay for similar work, a plaintiff would not have to prove that the jobs receiving unequal compensation were substantially equal with respect to skill, effort, responsibility, and working conditions. Instead, under this theory, a plaintiff could establish a prima facie case of sex-based wage discrimination by showing that the jobs were at least similar with respect to each of the four factors.

In *Briggs* v. *City of Madison*, a Wisconsin district court accepted a variation of the equal pay for similar work theory.[34] The plaintiffs in *Briggs* were female public health nurses employed by the City of Madison. The nurses claimed that the City engaged in sex discrimination by paying them less than male public health sanitarians. The district court concluded that the plaintiffs had made a prima facie case of sex discrimination by showing that:

> (1) they were members of a protected class (2) occupying a sex-segregated job classification (3) that was paid less than (4) a sex-segregated job classification occupied by the other sex and (5) that the two job classifications were so similar in their requirements of skill, effort, responsibility, and working conditions that it could reasonably be inferred that they were of comparable value to the employer.[35]

In finding that the crucial fifth criterion had been met by the nurses, the court noted that it did not have to evaluate the abstract worth to society or to an employer of one job against another, or to compare jobs that were different in their requirements of effort or responsibility, or to cross distinct job description lines into areas of entirely different skills. Instead, the court's analysis of the similarity of the work performed by female public health nurses and male public health sanitarians was more like the type of analysis done by a court in a a traditional equal work case.

The plaintiffs did not prevail in *Briggs*. The court concluded that the City of Madison rebutted the nurses' prima facie case by producing evidence that its wage determinations were made on the basis of the market demand for nurses and sanitarians. Under the burdens applicable to a disparate treatment analysis, the plaintiffs were then required to show that the reason advanced by the defendant for the wage differential was a mere pretext for sex discrimination. In the court's view, the nurses failed to do so.

We will examine the market defense in greater depth later. For now, it is important to note that despite the fact that the public health nurses did not finally succeed in their claim, *Briggs* is a potentially important precedent in that it held that a prima facie case of sex discrimination can be established based upon the similarity of jobs.

Briggs can also be viewed as an intentional discrimination case. In effect, the court concluded that the jobs being compared were so similar that the payment of different salaries by the employer gave rise to a presumption of an intent to discriminate on the basis of sex. However, the employer's argument that it had relied on the market in setting wages satisfied the court that this was not an instance of purposeful discrimination.

This reading of *Briggs* is supported by the citation of *Briggs* in *Lanegan-Grimm*, where the court held that the bookmobile driver/clerks in that case could recover on a theory of intentional discrimination as well as on a theory of equal pay for equal work. The court stated that the jobs of bookmobile driver and delivery truck driver were sufficiently similar (in fact, they were substantially equal) to give rise to an inference of intentional discrimination, thus establishing a prima facie case under Title VII. The court went on to find that the employer rebutted the prima facie case by pointing out some differences between the jobs of bookmobile driver and delivery truck driver. However, the female plaintiff proved that the Library Association's proffered reason for the pay disparity was pretextual by introducing unrebutted evidence that her supervisor had told her that a delivery truck driver was paid more because he was a man and the head of a household as well as other evidence of "an extremely derogatory and sexist remark" made by the head librarian.[36] Thus, in *Lanegan-Grimm*, a finding of intentional discrimination was premised on the substantial equality of the jobs plus statements that amounted to admissions of sex discrimination.

But whether the *Briggs* standard for a prima facie case of sex discrimination will withstand the test of time is highly debatable. In *Spaulding* v. *University of Washington*, the Ninth Circuit Court of Appeals recently reiterated its view that "evidence of comparable work, although not necessarily irrelevant in proving discrimination under some alternative theory, will not alone be sufficient to establish a prima facie case... We will not, therefore, infer [discriminatory] intent merely from the existence of wage differences between jobs that are only similar."[37]

In *Spaulding*, the predominately female nursing faculty at the University of Washington alleged that the University had violated Title VII by paying them less than male faculty members in other schools of the University, such as health services, social work, architecture, urban planning, environmental health, speech and hearing, rehabilitative medicine, and pharmacy practice. After rejecting the nursing professors' contention that their jobs were substantially equal to the jobs in the other schools, the Ninth Circuit turned to the nursing faculty's claim of disparate treatment under Title VII. In order to prevail on this claim, the Court noted that the plaintiffs had to present direct or circumstantial evidence of discriminatory motive on the part of the University. Since the nursing faculty had not shown the substantial equality of the jobs being compared, the Court stated that their case "must rest solely on evidence creating an inference that the wage disparity they point to was more likely than not the result of intentional sex discrimination."[38] Citing its opinion in *Gunther*, the Ninth Circuit stated that this inference could not be made *solely* on the basis of evidence of similar work, although the comparability of jobs in these terms might be *relevant* to reaching an inference of discriminatory animus.

The Ninth Circuit in *Spaulding* stated that it was rejecting the plaintiffs' suggestion that it adopt a "comparability plus" test for intentional discrimination whereby the required strength of the evidence showing specific intent to discriminate would vary in inverse proportion to the degree of the comparability of the jobs shown. The Court concluded that such a standard would be "unwieldy" thus "plunging courts into standardless supervision of employer/employee relations."[39] Nevertheless, the Court's willingness to consider the similarity of jobs as a relevent factor in determining whether a defendant intentionally discriminated on the basis of sex certainly suggests that the more comparable the jobs the more likely would be the inference of discriminatory intent.

The Court in *Spaulding* then turned to the plaintiffs' specific contentions of discriminatory intent and rejected them one-by-one. Here, the Court found that the University had cooperated in good faith in addressing the concerns of the nursing faculty, that there was no evidence that an all-male budget committee had discriminated against women, that the school of Nursing was not unjustifiably required to rely on lower ranking faculty members, that evidence of isolated discriminatory acts by individuals did not establish that discrimination was the standard operating procedure of the University, and that the University's efforts to pay its faculty members equitably—among themselves and as compared to other institutions—negated an inference of past or present discrimination.

Thus, *Briggs* and *Spaulding* represent two separate approaches to the similar work theory of pay equity. *Briggs* stands for the proposition that a prima facie case of wage discrimination can be based simply on the fact that an employer pays different wages to workers in sex-segregated jobs that are quite similar. *Spaulding*, on the other hand, stands for the proposition that while the similarity of work is a relevant factor in reaching an inference of sex discrimination, similarity alone cannot form the basis of a prima facie case.

In practice, however, *Briggs* and *Spaulding* are not that far apart. In both cases, the plaintiffs were ultimately required to show something more than the similarity of jobs in order to prevail. In *Spaulding*, this requirement meant that some evidence of discriminatory intent was necessary to support an initial inference of sex discrimination; in *Briggs*, it meant that the nurses were required to prove that the City's market defense was simply a pretext for sex discrimination. In both cases, the plaintiffs ultimately failed to convince the court that the employer had purposefully discriminated against women.

What distinguished *Lanegan-Grimm* from *Briggs* and *Spaulding* is not so much the standards and burdens that were applied but that the plaintiff was able to present direct evidence of overt discrimination by the employer.

Equal Pay for Equal Worth

If the theory of equal pay for similar work is in doubt, the theory that Title VII requires equal pay *solely* on the basis that jobs *are* of equal worth has no vitality at all. However, as we shall see, evidence of the relative worth of jobs might be relevant to a compensation claim that alleges intentional discrimination by the employer.

"Pure" Equal Worth—As discussed in Chapter 2, advocates of equal pay for equal worth maintain that Title VII requires equal pay for jobs whose content is dissimilar if those jobs involve either equal difficulty or are of equal value to the employer. The courts' rejection of this theory of "pure" equal worth is nearly universal.

Even prior to the Supreme Court's decision in *Gunther*, the courts generally rejected a pure equal worth theory of sex discrimination. In *Christensen* v. *State of Iowa*, the Eighth Circuit Court of Appeals rejected the notion that a prima facie case of sex discrimination was established "whenever employees of different sexes receive disparate compensation for work of differing skills that may, subjectively, be of equal value to the employer, but does not command an equal price in the labor market."[40] In *Lemons v. City and County of Denver*, the Tenth Circuit had held that "[t]he courts under existing authority cannot require the City within its employment to reassess the worth of services in each position in relation to all others, and to strike a new balance and relationship."[41] In *Gerlach* v. *Michigan Bell Telephone Company*, a district court in Michigan had concluded that "there is no independent cause of action based on a theory solely related to comparable worth and under-valuation".[42] And in *Gunther* itself, the Ninth Circuit had stated that evidence of comparable work would not alone be sufficient to establish a prima facie case of sex-based wage discrimination.[43]

The Supreme Court in *Gunther* did nothing to lend substance to the equal worth approach to pay equity. The Court specifically stated that the female matrons did not claim that they were entitled to increased compensation "on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community."[44] The Court also noted that the lawsuit did not "require a court to make its own subjective assessment of the value of the male and female guard jobs, or to attempt by statistical technique or other method to quantify the effect of sex discrimination on the wage rates."[45]

Subsequent to the *Gunther* decision, courts have continued to react negatively to claims that would require equal pay solely on the basis that two jobs are of equal value or difficulty. Even in *Briggs*, where the court took a relatively broad view of pay equity based on a similar work theory, the district court noted that the plaintiffs' case did "not require the court to evaluate the abstract worth to society or to an employer of one job as against another."[46]

In *Power* v. *Barry County, Michigun*, the district court held: "This Court cannot, and will not, evaluate different jobs and determine their worth to an employer or to society and then, on that basis alone, determine whether Title VII or the Equal Pay Act has been violated. Aside from the inherent problems and other ramifications in making such a subjective evaluation of the intrinsic worth of different jobs, I am precluded, because of the limitations of Title VII and the Equal Pay Act, from attempting such an onerous task."[47]

In *Connecticut State Employees Association v. State of Connecticut*, the district court stated that it would not "engage in a subjective comparison of the intrinsic worth of various dissimilar jobs."[48] In *Plemer v. Parsons-Gilbane*, the Fifth Circuit Court of Appeals stated that "[i]t is not the province of the courts...to value the relative worth of...differing duties and responsibilities."[49]

In *Spaulding v. University of Washington*, the Ninth Circuit held: "We agree with Lemons and Christensen and join those courts in refusing to accept a construction of Title VII allowing the nursing faculty to establish a prima facie violation of that Act whenever employees of different sexes receive disparate compensation for work of differing skills that may, subjectively, be of equal value to the employer, but does not command an equal price in the labor market."[50] Other courts have also expressed their unwillingness to accept a pure theory of equal pay for equal worth.[51]

Even in *American Federation of State, County, and Municipal Employees v. State of Washington*, the case most cited for adopting a "comparable worth" analysis, the court stated that the case did not require it "to make its own subjective assessment as to 'comparable worth' as to the jobs at issue."[52] However, as we will see later, on the basis of evidence of discriminatory intent going well beyond a showing just of the equal worth of jobs, the court in that case did conclude that the State of Washington had intentionally discriminated on the basis of sex.

Equal Worth as a Component of Intentional Discrimination – While the Supreme Court took great pains to distinguish the facts in *Gunther* from a case of "pure" equal worth, it did leave open the possibility that job evaluations intended to measure the "worth" of jobs might be used as evidence in a proof of intentional discrimination. In *Gunther* itself, for example, the Court suggested that proof of intentional discrimination might be accomplished by showing that the County of Washington has set the wage scale for female guards, but not for male guards, at a lower level than its own survey of outside markets and the worth of the jobs warranted. The Supreme Court did not actually decide, however, that proof of these allegations would establish a prima facie case of sex discrimination. Since *Gunther* was subsequently settled by the parties, we will never know if the proof in that case would have established a violation of Title VII.

In *Wilkins v. University of Houston*,[53] women in professional and administrative staff positions claimed that the University of Houston engaged in sex based wage discrimination. In 1975, the University had formulated a pay plan that was intended in part to cure existing inequities between male and female professional and administrative employees. Jobs were classified into various levels of responsibility and each classification was assigned a maximum and minimum salary. Plaintiffs introduced evidence that of 68 persons in the academic division of the professional and administrative staff – of whom 35 were men and 33 women – 21 were paid less than the minimum salary for the classification for their job, and 18 of these 21 were women. All four employees who were paid more than the maximum for their classification were men. In addition, the jobs of seven women were reclassified to lower job levels, an action that the Court found was contrary to the purpose of the pay plan. On the basis of this evidence, which the Court stated was somewhat similar to the facts alleged in *Gunther*, the Fifth Circuit held that the University had engaged in a pattern or practice of sex discrimination.

In the *Connecticut Employees* case, female employees contended that the State of Connecticut had determined dissimilar jobs to be of equal value but had not provided equal pay because of the sex of the employees. The court held that these allegations were sufficient to state a proper case of sex discrimination. The court stated that if these allegations were proven, they would constitute evidence of intentional discrimination under Title VII.[54] However, there was no final determination as to whether a prima facie case of sex discrimination could be established on the basis of those facts.

The most important case to date to consider the effect of job evaluations on a claim of intentional discrimination is *American Federation of State, County, and Municipal Employees v. State of Washington (AFSCME)*. In *AFSCME*, a study ordered by the Governor of Washington had concluded in 1974 that the State of Washington paid different wages for jobs held predominately by men and jobs held predominately by women which were evaluated to be of "equal worth" to the state. A consulting firm hired to evaluate government salaries subsequently concluded that job classifications that consisted of at least 70 percent women were paid approximately 20 percent less than other job classifications of similar worth that consisted of at least 70 percent men. The state later developed an evaluation system by which these job classifications were assigned wages on the basis of knowledge and skills, mental demands, accountability, and working conditions. The state did not begin to implement this system until July 1984, nearly three years after employees in the job classifications that were underpaid according to the studies had filed a lawsuit against the State.

In its December 1983 decision, the district court in Washington characterized *AFSCME* as being analogous to *Gunther* in that female employees challenged their employer's failure to rectify an acknowledged disparity in pay between sex-segregated job classifications in accordance with the employer's own evaluation of the worth of the jobs. The court concluded that the plaintiffs proved that the State had intentionally discriminated on the basis of sex. This conclusion was based upon: (a) evidence that the State had deliberately perpetuated a 20 percent disparity in salaries between sex segregated job classifications that were evaluated to be of equal worth; (b) other statistical evidence, including evidence that the number of women in a job classification was inversely proportional to the salary; (c) the application of subjective standards which had a disparate impact on jobs held predominately by females; (d) admissions by State officials that wages were discriminatory; and (e) the State's failure to pay the full evaluated worth of the jobs.

AFSCME is based upon a very complex factual situation and the court's decision is quite confusing and somewhat rambling. Nevertheless, the case is extremely important because it held that an employer's failure to implement a job evaluation study was evidence of intentional discrimination. This factual situation takes *AFSCME* beyond *Gunther*, where the employer was alleged to have implemented a job evaluation study with respect to male-dominated jobs but not with respect to female-dominated jobs. Whether or not the intentional discrimination analysis in *AFSCME* will hold up on appeal to the Ninth Circuit is questionable. One court commenting on *AFSCME* stated: "The superficially plausible analysis in [*AFSCME*] is fundamentally implausible. It is impractical and violative of market conditions to attempt to correct all disparity between the pay for so called 'women's jobs' and the pay for so called 'men's jobs' by stretching the Equal Pay Act or Title VII beyond their language."[55]

Disparate Impact as a Theory for Requiring Equal Pay for Equal Worth—As discussed earlier, a Title VII discrimination claim can be based upon a disparate treatment or a disparate impact theory. Disparate treatment requires proof of discriminatory intent, but disparate impact does not. Generally, in a disparate impact claim, the plaintiff must show that a facially neutral practice applied by an employer has a disproportionate impact on a member of a group protected by Title VII.

The disparate impact theory was developed as a means of identifying and eliminating certain discriminatory employment practices that are obviously not job-related. Examples of the type of employment practices that have been prohibited include intelligence tests which adversely affect minorities, height and weight or other requirements that have a disproportionate impact on one sex, and policies which exclude applicants based on arrest records.

The Supreme Court did not expressly decide in *Gunther* whether a disparate impact theory could be used in a sex-based wage discrimination claim involving unequal jobs. However, the Court's repeated allusions to *intentional* discrimination suggest that it might view discriminatory motive as an essential element of such a claim, thus excluding a disparate impact approach.

The court in *AFSCME*, however, concluded otherwise. There, the court held that a facially neutral practice engaged in by the State—the State's system of compensation—had a disproportionate impact on employees in predominately female classifications.

The district court's analysis of disparate impact in *AFSCME* is unlikely to be upheld on appeal, however, considering the Ninth Circuit's discussion of disparate impact in *Spaulding*. In *Spaulding*, the Court of Appeals held that a prima facie case of sex discrimination cannot be made out under a disparate impact theory where the plaintiff relies upon "a wide-ranging claim of wage disparity between only comparable jobs."[56]

The nursing faculty in *Spaulding* had claimed that the University of Washington's reliance on the market to set wages was a facially neutral policy that had a discriminatory impact on female professors in the School of Nursing. The Court held, however, that reliance on competitive market prices is not a facially neutral policy susceptible to a disparate impact analysis. The Ninth Circuit explained:

> Every employer constrained by market forces must consider market values in setting his labor costs. Naturally, market prices are inherently job-related, although the market may embody social judgments as to the worth of some jobs. Employers relying on the market are, to that extent, "pricetakers." They deal with the market as a given, and do not meaningfully have a "policy" about it in the relevant Title VII sense....Additionally, allowing plaintiffs to establish reliance on the market as a facially neutral policy for Title VII purposes would subject employers to liability for pay disparities with respect to which they have not, in any meaningful sense, made an independent business judgment. As we have previously said, "...Title VII does not ultimately focus on ideal social distributions of persons of various races and both sexes. Instead it is concerned with combating culpable discrimination. In disparate impact cases, culpable discrimination takes the form of business decisions that have a discriminatory impact and are not justified by their job-relatedness."[57]

Because of the dynamic and controversial nature of the issue, *Spaulding* is unlikely to be the final word on disparate impact claims involving reliance on the market to set wages for unequal jobs. Nevertheless, *Spaulding* provides a strong foundation for countering a disparate impact attack on compensation decisions.

Pay Parity

The theory that sex discrimination exists unless the average wage paid to all women equals the average wage paid to all men has absolutely no legal basis. To our knowledge, no court addressing a pay equity question has ever even considered this theory seriously, even though in a political context that notion has strong emotional appeal. As was explored in Chapter Three, the existence of a general wage gap simply does not constitute evidence of intentional sex discrimination by particular employers.[58]

Other Approaches to Sex Discrimination – The four approaches to pay equity discussed above do not cover every instance in which a sex-based wage discrimination claim can be established under Title VII. While other theories go somewhat beyond the issue of "comparable worth," we wish to address a few of them briefly for purposes of completeness.

In *Gunther*, the Supreme court stated that Title VII clearly covers situations in which employers admit that they pay women employees less because of their sex or use transparently sex-biased systems for wage determination. The facts of *IUE v. Westinghouse Electric*[59] suggest circumstances in which a court might conclude that an employer used a "transparently sex-based system for wage determination." There, Westinghouse revised its compensation system in 1965 in such a way that overt sex discrimination from the 1930s was arguably perpetuated into the 1960s and 1970s. The company's reliance on its historical practices in devising a new compensation system could be found to violate Title VII. However, since the *IUE* case was settled before any decision on the merits occurred, that particular fact pattern has not been addressed by a court.

Whereas allegations of overt or transparent sex discrimination involve a relatively straightforward presentation and review of evidence, some plaintiffs in Title VII actions attempt to establish their claims through a more sophisticated process — statistical analyses that purport to give rise to an inference, if not final proof, of discrimination. These statistical cases usually involve entire classes of employees rather than individuals and are often made in the context of wide-ranging claims of sex discrimination involving hiring, recruitment, and promotion, as well as compensation. Plaintiffs in these cases generally must show that discrimination is the employer's "standard operating procedure—the regular rather than the unusual practice."[60]

While the courts have not always agreed upon the precise standards that should apply to broad allegations of sex-based wage discrimination that are premised upon statistical evidence, most courts have required that the statistical analysis be highly refined. In *Wilkins v. University of Houston*, for example, the Fifth Circuit warned of the "inherently slippery nature" of statistics and noted Mark Twain's observation that "there are three kinds of lies — lies, damned lies and statistics."[61] The Supreme Court has stated that statistics are not irrefutable and "their usefulness depends on all the surrounding facts and circumstances."[62]

In sex-based wage discrimination claims, the statistical evidence put forward by the plaintiffs usually consists of a comparison of the wages paid to different employees, with varying degrees of effort to account for factors other than sex that might explain the pay disparities. For whatever reason, the most important cases concerning these kinds of allegations involve faculty members of colleges and universities.

In *Wilkins*, female faculty members presented evidence that the University of Houston paid male professors more than female professors even when rank, length of service, age, or discipline was held constant. The Fifth Circuit Court of Appeals rejected the female professors' wage compensation claim, however, because their statistical evidence only held constant one of these factors at a time. The Court stated that "[t]he fundamental flaw in plaintiffs' statistical evidence is that it fails to take into account the fact that a number of factors operate simultaneously to influence the amount of salary a faculty member receives."[63]

The Ninth Circuit Court of Appeals has also taken a cautious approach to the use of statistics as circumstantial evidence of discrimination. In *Spaulding v. University of Washington*, the Court noted that statistics "can be exaggerated, oversimplified, or distorted to create support for a position that is not otherwise supported by the evidence."[64] It warned that the usefulness of comparative statistics rests directly on their capacity to single out factors that convert merely different treatment into unjustified discriminatory treatment. "The more sophisticated the method of algebraic adjustment that is used, such as multivariate regression analysis, the more likely an illicit discriminatory factor can be ferreted out."[65] The Court in *Spaulding* stated that evidence of a pay disparity between jobs that are only similar says little about discrimination. The Court specifically rejected the nursing faculty's statistics on the basis that they did not control for discipline, job experience, day-to-day responsibilities, and the relative value of different master's degrees.

The Eighth Circuit Court of Appeals was more receptive toward the statistical evidence presented by female faculty members in *Craik v. Minnesota State University Board*.[66] There, the evidence was in the form of multiple-regression analyses that controlled for such factors as rank, experience, degree and degree category. The Court held that the statistical evidence, in light of other evidence showing sex discrimination with respect to appointments and promotions, demonstrated that salary differentials were the result of intentional discrimination. The Court went on, however, to conclude that the University's practice of giving market-factor pay increases to traditionally all-male disciplines identified as "scarce market areas" was not a violation of Title VII.

Finally, in *Melani v. Board of Higher Education of the City of New York*,[67] a district court in New York concluded on the basis of statistical evidence that the City University of New York had engaged in sex-based wage discrimination. The statistical analysis in that case included as many as 98 independent variables, including age, years of service, academic degree, quality of degree, certificates and credentials, time elasped since completion of degree, and time elapsed between completion of successive degrees.

The court's treatment of the statistical evidence in *Melani* is controversial on at least four counts. First, the court concluded that when *similar* jobs are being compared, a regression analysis need not control for differences in job title by including variables measuring the additional qualifications specific to certain job titles or a variable for the job titles themselves. Second, the court concluded that the regression models did not have to include variables measuring post-hire publications, teaching quality, or committee or community work since these variables may be significantly affected by the employer's own actions. Third, the court stated that the statistical analysis did not have to control for academic department since Title VII regression studies "need not account for every factor that conceivably might explain differences in salaries or promotions."[68] Finally, the court did not consider whether market demand for instructors in different disciplines might justify paying them different salaries. Another court considering the statistical evidence presented in *Melani* could easily find that evidence to be unconvincing.

The lesson of these cases is that a sophisticated multi-variable regression analysis involving the compensation paid to male and female employees can possibly lead a court to conclude that an employer has discriminated on the basis of sex. The burden on the employees to prove discrimination through the use of statistics only, however, remains a severe one.

"The Market" and Other Defenses

The discussion thus far has focused primarily upon the types of facts that can establish a prima facie case of sex-based wage discrimination. But even if such a prima facie case is presented by a plaintiff, the employer can defeat the claim by demonstrating that the wage disparity being questioned is based upon: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) any factor other than sex.

The first three defenses are fairly straightforward. Most disputes involving these defenses concern whether the employer maintained a "system" that is regularly and consistently applied. However, the fourth catch-all defense—any factor other than sex—has been the subject of wide controversy.

The most common defense to a wage discrimination claim is that the disputed pay differential is based upon "the market." Courts have taken two quite different approaches to the market defense. One line of cases holds that an employer's perception that women would generally work for less than men is not a justification for paying women less. The other line of cases holds that an employer may consider the market in determining workers' wages.

Generally speaking, the market defense is most likely to be accepted in cases involving unequal jobs where intentional discrimination by a specific employer must be proven. In those cases, an employer's reliance on the market can serve to defeat a finding of discriminatory motive, even if the market itself might reflect some element of societal discrimination against women. In a claim involving equal work, however, intentional discrimination need not be proven and a defense based on the general market for labor is typically not available. Still, the employer can usually defeat an equal pay for equal work claim by showing that it considered the market place value of the skills of a particular individual in determining his or her salary.

This last point is illustrated by two cases. In the first, the Eighth Circuit Court of Appeals held that a school was justified in paying a male teacher more than a female teacher because the male's experience and ability made him the best person available for the job and because a higher salary was necessary to hire him.[69] In another equal work case, the First Circuit Court of Appeals held recently that Brown University could pay a female professor more than a male professor in the same department because she had received a job offer at a higher salary from another university and Brown had to match that offer in order to retain the female professor's services.[70]

A word of caution is appropriate here. An employer asserting a market defense in an equal work context must be able to prove that the salary of an individual was in fact based upon the market value of that person. The law would not permit an employer to maintain a general wage differential along sex lines merely because of the employer's perception that men generally command higher wages than women.[71]

The market defense has also been effective in the context of jobs that are not equal. In *Christensen* v. *State of Iowa*, for example, the Eighth Circuit held that market factors prevented the plaintiffs from establishing even a prima facie case under Title VII. In that case, the University of Northern Iowa had commissioned a relative worth job evaluation study which concluded that plant workers and clerical employees should be compensated at the same rate. The University did not implement the pay plan with respect to the plant employees, however, because wages for similar jobs in the local labor market were higher than those established under the job evaluation study. The Court of Appeals held that Title VII does not require an employer "to ignore the market in setting wages for genuinely different work classifications." The Court stated that legitimate factors that might influence the wages paid to a particular classification of employees include "the supply of workers willing to do the job and the ability of the workers to band together to bargain collectively for higher wages."[72]

In *Lemons* v. *City and County of Denver*, nurses employed by the City of Denver challenged a compensation system that based the pay of municipal employees on the wages paid to similar workers in the private sector. The nurses argued that their profession had historically been underpaid due to sex discrimination and that the city's compensation system perpetuated this discrimination. The Tenth Circuit Court of Appeals ruled that Title VII did not require the city to ignore the market in setting its wage rates for different job classifications.[73]

The Eighth Circuit again weighed in on the side of the market in *Craik v. Minnesota State University Board* when it held that the University could pay higher salaries to professors in the fields of Business Administration, Computer Science, Economics, Engineering Technology, and Mathematics than professors in disciplines such as English and Education, despite the fact that the former fields were occupied primarily by men and the latter disciplines primarily by women. The Court accepted the University's claim that the higher salaries were necessary to maintain a strong faculty in the first group of disciplines due to the greater market demand for professionals in those fields.[74]

The most detailed discussion of the market defense occurred in *Briggs v. City of Madison*. There the Court concluded that public health nurses had proven a prima facie case of sex discrimination on the basis of the wage disparity between female nurses and male sanitarians who did similar work. Under the allocation of burdens in a Title VII case, the City of Madison then had to articulate a legitimate reason other than sex for the pay differential. This the city attempted to do by stating that it had been forced to increase the pay for the male sanitarians due to market factors.

The nurses argued that the market reflected societal discrimination against women, especially in the field of nursing, and that the market was therefore not a legitimate reason for paying different salaries to nurses and sanitarians. The court rejected this argument on the basis that Title VII only prohibits an employer's *own* acts of discrimination and does not hold an employer responsible for conditions in the marketplace. The court stated that an employer is justified in paying the wage rates necessary to compete in the marketplace for qualified job applicants.

The nurses in *Briggs* contended next that the market defense had been rejected in some equal work cases and should be rejected for the same reasons where jobs are only similar. The court rejected this argument on the basis that equal work cases denying a market defense involved jobs that were so similar as to be interchangeable. Where different skills are required for the performance of jobs, however, the employer, according to the court, "may explain and justify an apparent illegal wage disparity by showing that persons possessing the requisite skills are commanding higher wage rates in the local market."[75]

The nurses than argued that the city's reliance on the market was merely a pretext for discrimination, since its decision to upgrade the wages paid to male sanitarians was not a response to a legitimate perception that pay increases were necessary in order to recruit and retain qualified sanitarians. Here the court found that the nurses had failed to present hard evidence regarding the labor pool for nurses and sanitarians, the number of applicants for vacancies, or the average length of time that vacancies remained unfilled. In the absence of this type of evidence, the court held that the nurses had not sufficiently refuted the city's position that higher salaries were necessary to retain and recruit sanitarians but not to retain and recruit public health nurses.

Briggs involved a market defense in a disparate treatment context. In a disparate impact case, an employer invoking a market defense would have to demonstrate that its reliance on the market was a "business necessity." In view of the obstacles that a plaintiff must overcome to establish a prima facie case of sex discrimination in a disparate impact case involving unequal jobs, however, the market defense has rarely, if ever, been addressed by a court in that context.

While the market is the most common "factor other than sex" used as a defense in wage discrimination claims, other factors have also been cited.

Some employers have argued against the imposition of a remedy under Title VII or the Equal Pay Act on the basis that the remedy would be too costly to implement. The courts have generally, but not always, rejected the cost defense where it is used to oppose the prospective implementation of a remedy after unlawful sex discrimination has already been found. However, in *City of Los Angeles v. Manhart*, the Supreme Court declined to apply retroactively its holding that the use of sex-based actuarial tables violated Title VII because of the potential devastating impact such a ruling would have on the viability of pension plans.[76] An issue that has not been decided is whether the high cost to the employer of implementing a job evaluation plan can be used for the narrow purpose of refuting a charge of intentional discrimination in a disparate treatment case. For example, if implementation would threaten the employer's financial stability or result in a labor cost increase which the employer was unwilling or unable to absorb, perhaps no inference of intentional sex discrimination would arise if the employer declined to implement the plan because of the cost.

Another potential defense to a prima facie case of wage discrimination is that some job classifications are better unionized and have therefore been able to bargain for higher wages. This defense has been rejected in the context of equal work.[77] Whether or not it might defeat a claim of intentional discrimination in a case involving unequal work is not presently known.

Finally, in *Kouba v. Allstate Insurance Company*, Allstate claimed that it paid its male and female sales agents different wages because it based compensation in part on an individual's prior salary. The Ninth Circuit Court of Appeals held that in order to qualify as "a factor other than sex," Allstate's practice of using prior salaries must be business related and Allstate "must use the factor reasonably in light of the employer's stated purpose as well as its other practices."[78] The Court of Appeals sent this issue back to the district court, but the case was settled before the district court decided whether the business reasons set forth by Allstate reasonably explained the company's use of prior salary.

Final Thoughts on Pay Equity Litigation

As should now be evident, the concept of "comparable worth" has not been welcomed with open arms by this nation's judiciary. Where unequal jobs are being compared, a plaintiff faces tremendous obstacles, first to establish a prima facie case of sex-based discrimination and then to prove that the employer's purported reliance on the market as a factor other than sex is merely a pretext for discrimination.

Employers generally take one of two broad approaches to determine salaries. First, they might pay their employees on the basis of market factors, without attempting any evaluation of the difficulty or value of jobs or components of jobs. Under existing statutes as interpreted to date by the courts, an employer using this method of salary determination is most unlikely to be found in violation of Title VII with respect to unequal jobs, unless the employer engages in some overt action or makes some statement that amounts to an admission of sex discrimination.

Other employers use some form of job evaluation in determining salary ranges. These job evaluations might be conducted internally or by a contractor, and they might take the outside market into consideration or they might not. But to some extent, these job evaluations are intended to measure the difficulty or value of jobs and to achieve some sort of internal or external equity in salary determinations.

It is in the area of job evaluations that most of the controversy regarding "comparable worth" now exists. While the courts have stated with universal clarity that they will not conduct their *own* evaluations of the "worth" of jobs, they have been less reluctant to rely on evaluations conducted by others in considering whether an employer had engaged in intentional discrimination. Still, there are many unanswered questions about the role of job evaluations in a Title VII sex-based wage discrimination action.

The strongest case for inferring intentional sex discrimination would occur if an employer conducted a job evaluation study and then implemented the results of that study differently with respect to male and female workers. The *Gunther* case is often cited as involving this type of factual scenario, although as we have seen the actual facts in *Gunther* are uncertain and were never clearly presented to the Supreme Court. But even assuming the facts were as stated, *Gunther* did not conclude that such facts would establish even a prima facie case of sex discrimination, much less a winning case. That lawsuit was settled before it was ever reviewed on the merits. Thus, it is still uncertain whether that fact pattern, standing alone, would cross the threshhold of impermissible conduct.

Wilkins v. University of Houston also fits this factual pattern, with one important difference. In *Wilkins*, the Fifth Circuit Court of Appeals concluded that the University of Houston violated Title VII by conducting a job evaluation that was at least in part intended to result in pay equity between the sexes, and then failing to implement that study with respect to a significant portion of its female employees. The "important difference" in *Wilkins* was the additional element that the University had tried to reclassify some women into lower paying positions. This overt act certainly influenced the Court's decision and might even by itself have been found to violate Title VII.

The next scenario involves an employer which conducts a job evaluation study, implements the results of that evaluation, but then decides to deviate from the study with respect to certain job classifications because of market factors. Both the *Christensen* and *Briggs* cases involved this type of factual situation and both courts held that the employer was justified in paying certain workers in certain job classifications more than the evaluated worth of those jobs because of market considerations. However, either of these cases might have gone the other way if it had been shown that the employer was not in fact responding to the market in deviating from its job evaluation study or if the employer's reliance on the market was unreasonable.

Another situation involves an employer which has conducted a job evaluation study which reveals that wage differentials exist between sex-segregated positions and that those differentials cannot be explained by nondiscriminatory factors. If the employer decides to ignore the study completely, has it violated Title VII? This is the factual situation in *AFSCME*. There, the district court held that the State of Washington had violated Title VII by failing to implement its study of public sector employees. But this question is far from settled. *AFSCME* itself might well be reversed by the Ninth Circuit or the Supreme Court. Furthermore, in other cases an employer might be able to show that an initial job evaluation study was invalid or unreliable, that the study was not implemented because it was too costly, or that the employer adopted some other compensation system that did not violate Title VII. While no guarantees can be made, these might be considered adequate reasons for not abiding by the results of a job evaluation study. Or the courts might go even further and hold that Title VII does not require an employer to implement an evaluation that it has voluntarily undertaken and that the failure to implement does not constitute evidence of intentional discrimination. These courts might reason that to do otherwise would inappropriately discourage employers from engaging in job evaluations at all. Support for this theory can be found in cases involving requests for disclosure of affirmative action plans under the Freedom of Information Act or pretrial discovery in Title VII cases. In those cases, courts have walked a fine line between requiring disclosure of critical self-analyses and inhibiting employers from analyzing their own employment practices.[79]

The next unanswered question is whether Title VII can be read as *requiring* an employer to conduct a job evaluation study when it has sex-segregated positions. No court has ever gone that far, nor is one likely to do so. While in *Taylor* v. *Charley Brothers Company* the court used the fact that the employer "had not undertaken any evaluation which would have indicated the value of the jobs held by either men or women" as one of many reasons for inferring that intentional wage discrimination had occurred,[80] that case involved widespread evidence of intentional sex discrimination and appears to have little precedential value beyond its own facts.

Finally, there is a question as to whether courts will permit plaintiffs in a Title VII action to present their own job evaluation study as evidence of intentional discrimination by an employer. Such a study might be conducted prior to a lawsuit and the employer's refusal to implement the study used as a basis for a Title VII charge. Or a study might be made after a lawsuit has been commenced to show that a wage differential exists for jobs of equal worth. While no court has addressed facts such as these, the post-lawsuit job evaluation is somewhat akin to a statistical analysis intended to demonstrate discrimination. As we have seen, courts are willing to examine statistics as evidence of sex discrimination, but the statistical analysis must be conducted in a sophisticated manner so as to eliminate variables other than sex that might explain wage disparities. Whether a court would accept a sophisticated, after-the-fact job evaluation as evidence of sex discrimination is a matter of pure conjecture at this time.

Chapter 4 Footnotes

[1] National War Labor Bd., Termination Report 290 (1945).

[2] *Brown and Sharp Manufacturing Co.*, 3 War Labor Rep. 321 (1942); *General Motors Corporation*, 3 War Labor Rep. 348 (1942); *California Metal Trades Association*, 5 War Labor Rep. 461 (1943); *General Electric Corporation*, 28 War Labor Rep. 666 (1945).

[3] HR 10226, 87th Cong., 2d Sess. (1962).

[4] Hearings on HR 8898 and HR 10226 before the Select Subcommittee on Labor of the House Committee on Education and Labor, 87th Cong., 2nd Sess., 16, 27 (1962).

[5] 108 Cong. Rec. 14767 (1962).

[6] 109 Cong. Rec. 9197 (1963).

[7] 452 U.S. 161 (1981).

[8] For a state-by-state summary of state legislative activity regarding pay equity, see Appendix A.

[9] One of the most unique approaches has been taken in Madison, Wisconsin. In 1983, the city government enacted guidelines requiring that the wage structures of private businesses that contract with the city be reviewed "to determine whether comparable pay exists for comparable positions." To comply with the guidelines, vendors must set percentage goals for hiring women and minorities and maintain the same percentage goals for the distribution of salaries to these groups. For example, if a private contractor's work force is 30 percent female, its wage distribution goal would be to pay 30 percent of all wages to its female employees. This is perhaps the only "comparable worth" initiative which appears to be based on the "pay parity" principle discussed *supra*, at p. 6 and *infra* at pp. 26-27.

[10] *Farnco Construction Co. v. Waters*, 438 U.S. 567, 580 (1978).

[11] Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981).

[12] *Id.* at 256.

[13] *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

[14] Ibid.

[15] *Spaulding v. University of Washington*, 35 FEP Cases 217, 230 (9th Cir. 1984).

[16] 563 F.2d 353 (8th Cir. 1977).

[17] *Id.* 356.

[18] 620 F.2d 228 (10th Cir. 1980).

[19] *Id.* at 229.

[20] 501 F.Supp. 1300 (E.D. Mich. 1980).

[21] *Id.* at 1321. (emphasis original).

[22] Ibid.

[23] 631 F.2d 1094 (3rd Cir. 1980).

[24] 25 FEP Cases 602 (W.D. Penn. 1981).

[25] *Gunther v. County of Washington*, 623 F.2d 1303 (9th Cir. 1979).

[26] *Id.* at 1321.

[27] 452 U.S. at 166.

[28] *Id.* at 180-81.

[29] *Id.* at 203-04 (emphasis original).

[30] *Id.* at 166 n.7.

[31] Telephone conversation with Carol Hewitt, counsel for plaintiffs in *Gunther*, October 19, 1984

[32] 691 F.2d 873 (9th Cir. 1982).

[33] 31 FEP Cases 865 (D. Ore. 1983).

[34] 536 F.Supp. 435 (W.D. Wis. 1982).

[35] *Id.* at 445.

[36] 31 FEP Cases at 871.

[37] *Spaulding v. University of Washington*, 35 FEP Cases 217, 226 (9th Cir. 1984).

[38] 35 FEP Cases at 226.

[39] Ibid.

[40] 563 F.2d at 356.

[41] 620 F.2d at 229.

[42] 501 F.Supp at 1321.

[43] 623 F.2d at 1321.

[44] 452 U.S. at 166.

[45] *Id.* at 180.

[46] 536 F.Supp. at 446.

[47] 539 F.Supp. 721, 726-727 (W.D. Mich. 1982).

[48] 31 FEP Cases 191, 193 (D. Conn. 1983).

[49] 32 EPD ¶33,817, pp. 30, 928-29 (5th Cir. 1983).

[50] 35 FEP Cases at 231.

[51] *EEOC v. Affiliated Foods*, 34 EPD ¶34, 392 (W.D. Mo. 1984); *Cox v. American Cast Iron Co.*, 565 F. Sup. 1143 (N.D. Ala. 1984).

[52] 578 F.Supp. 846, 862 (W.D. Wash.).

[53] 654 F.2d 388 (5th Cir. 1981), rehear. den. 662 F.2d 1156, vacated on other grounds 29 FEP Cases 1559 (1982).

[54] 31 FEP Cases at 193.

[55] *Cox v. American Cast Iron Co.*, 585 F.Supp. 1143, 1152 (N.D. Ala. 1984).

[56] 35 FEP Cases at 231.

[57] *Id.* at 232-33.

[58] However, wage guidelines adopted by the City of Madison, Wisconsin for private contractors doing business with the city appear to be based on this concept. See *supra*, p. 17.

[59] 631 F.2d 1094 (3rd Cir. 1980).

[60] *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 336 (1977).

[61] 654 F.2d at 295.

[62] 431 U.S. at 340.

[63] 654 F.2d at 402.

[64] 35 FEP Cases at 228.

[65] *Id.* at 229.

[66] 34 FEP Cases 649 (8th Cir. 1984).

[67] 31 FEP Cases 648 (S.D.N.Y. 1983).

[68] *Id.* at 655.

[69] *Horner v. Mary Institute*, 613 F.2d 706 (8th Cir. 1980).

[70] *Winkes v. Brown University*, No. 83-1649 (1st Cir. October 26, 1984).

[71] *Equal Employment Opportunity Commission v. Village of Schaumburg*, No. 82-C-1825 (N.D. Ill. December 6, 1983).

[72] 563 F.2d at 356.

[73] 620 F.2d at 229.

[74] 34 FEP Cases 649, 661 (8th Cir. 1984).

[75] 536 F.Supp. at 447.

[76] *See Arizona Governing Committee v. Norris*, 77 L.Ed.2d 1236 (1983); *City of Los Angeles v. Manhart*, 435 U.S. 702 (1978).

[77] *Lanegan-Grimm v. Library Association of Portland*, 31 FEP Cases 865, 870-71 (D.Ore. 1983).

[78] 691 F.2d at 877.

[79] *Electrical Workers, IUE v. N.L.R.B.*, 648 F.2d 18 (D.C. Cir. 1980); *O'Connor v. Chrysler Corp.*, 86 F.R.D. 211 (D.Mass. 1980); *Jacobs v. Sea-Land Serv., Inc.*, 23 FEP 1179 (N.D. Cal. 1980).

[80] 25 FEP Cases at 614.

Senator **Stevens**. The next witnesses are Marie Argana and Eileen Stein, the first being the national president of Federally Employed Women, accompanied by Chris deVries, and the second, Ms. Stein, being the chairperson of the National Committee on Pay Equity.

Who is with you? Ms. Stein, who is with you?

TESTIMONY OF MARIE ARGANA, NATIONAL PRESIDENT, FEDERALLY EMPLOYED WOMEN, ACCOMPANIED BY CHRIS deVRIES, LEGISLATIVE DIRECTOR; EILEEN STEIN, CHAIRPERSON, NATIONAL COMMITTEE ON PAY EQUITY, AND CLAUDIA WAYNE, EXECUTIVE DIRECTOR

Ms. **Argana**. I am Marie Argana with Federally Employed Women. With me is Chris deVries, my legislative director.

Ms. **Wayne**. I am Claudie Wayne, executive director of the National Committee.

Senator **Stevens**. Thank you.

All right. Ms. Argana?

Ms. **Argana**. Senator, thank you for asking the Federally Employed Women [FEW] to testify here. FEW is an international membership organization representing women in the Federal Government throughout the United States and foreign nations. FEW was founded in 1968 to advocate equal opportunity and foster full potential for working women in the Federal sectors.

The issue of pay equity is an important and timely issue. The board of directors of Federally Employed Women voted in February 1985 to designate the subject of pay equity as one of FEW's legislative priorities. A position paper is attached to my written testimony.

The wage differentials between male and female workers are prevalent in the Federal work force. Federally employed women can expect to earn 63 percent of the wages of all men. A large portion of this wage gap can be directly attributed to occupational segregation within the Federal workplace. Although women comprise nearly half of the workers in the General Schedule classification system, 73 percent of all women are in GS grades 1 through 8. Only 22 percent of all GS supervisors are women. If the occupational series are examined, women comprise 70 percent of all general administrative, clerical, office service jobs, but only 5 percent of the engineer and architect series. Additionally, within the female-dominated occupations, women are still crowded into the lowest grades.

The General Accounting Office in its report illustrates how the Federal classification systems can be studied for sex-based wage discrimination. The report suggests utilizing two methodologies conducted either simultaneously or sequentially: a labor market analysis and a job content study.

Although FEW has no difficulty with this suggestion, we would ask the committee to consider conducting the economic analysis first in order to determine the amount of sex discrimination in the Federal wage system followed by a job content study to determine the existence of sex-based wage discrimination in each individual job category. Conducting both types of analyses will ultimately strengthen the results of the study.

When conducting an economic analysis of the Federal wage systems, it is necessary to ensure that sexual bias does not enter the methodology. Examination of current literature documents that women are employed in different occupations than men in both the private and public sector and that these occupations that are female intensive have less earnings potential than those occupations that are male intensive.

In dispute, however, is the origin of occupational segregation: Whether women choose to be in the lower occupations, whether women are systemically excluded from high wage positions and the remedy for narrowing the earnings differential between men and women.

The GAO report offers several economic theories that can be utilized in a labor market analysis of a wage system, including the Polachek and Mincer argument and the occupational segregation theory and the dual labor market concept.

Although FEW supports the implementation of an economic analysis of the Federal classification system in pay equity, we urge caution in interpreting the results.

Although labor market analysis is a valid approach in determining sex-based wage discrimination, there are many conflicting theories regarding the causes and extent of this discrimination.

In my written testimony, I go into quite some detail on the conflicts in each economic theory. The GAO report also offered the job content approach as a method to conduct a pay equity study of the Federal classification systems.

In this analysis, it is assumed that jobs are paid based on their worth to the Federal Government. The GAO report goes into some detail on point factor evaluation systems, either by means of the a prior method or a policy capturing method. FEW endorses this approach to study the Federal classification systems for sex-based wage discrimination, as this method directly addresses the issue of comparable worth, whether jobs of equal value are being paid equal.

If a policy capturing method is used, however, we would urge that this study incorporate the suggestions of GAO and modify the method to ensure that inherent sex biases present in the systems are eliminated.

FEW would urge the committee to be cautious in considering the Office of Personnel Management as a possibility for conducting this pay equity study because their recent history has shown that OPM is not committed to the realization of pay equity in the Federal work force. FEW would suggest either hiring an outside consulting firm to perform the study or to consider an agency such as the General Accounting Office or the National Academy of Sciences.

FEW recommends that a pay equity study of the Federal Government include both the GS and the FWS classification systems. Eighty-three percent of all Federal workers are under these pay systems, so such a study would encompass nearly all the Federal work force. We would also suggest developing additional criteria to study the remaining classification systems at a later date.

FEW also endorses the concept of a steering committee to implement and follow the process of the pay equity study. We concur with GAO's suggestion that members of the steering committee should provide a wide-based representation on the issue of pay equity and include Members of Congress, representatives from employee organizations and women's organizations and a representative from OPM.

We also agree with the idea of a technical committee to assist the steering committee. As an organization which represents women in the Federal Government, FEW would ask to be considered to sit on this steering committee.

FEW applauds GAO in the efficient manner in which they produced a report that details the possibilities of the implementation of a pay equity study for the Federal Government. This report concludes the arguments of whether such a study is a possibility.

There are many compelling reasons why pay equity should be realized in our society. Women have the same expenses as men and should not be penalized because of their sex. In addition, women who are employed by the Federal Government contribute as much as male workers to the efficiency and productivity of the Federal Government. The wage gap has contributed to the growing numbers of women and children with income below the poverty level.

Women heading households as well as elderly women are increasingly living in poverty. Retirement annuities are dependent upon one's lifetime earnings. Low wages directly translate into small pensions.

This is a problem shared by women in both private and public employment.

FEW urges this committee to vigorously pursue the issue of pay equity in the Federal sector as well as in the private sector. We support S. 519, which would make a study of the Federal classification systems for sex-based wage discrimination.

Many States are successfully conducting pay equity studies and correcting their State classification systems for sex-based wage discrimination. The concept of pay equity is not a mystifying radical plot that will cause chaos in our economy, as its opponents have portrayed it, but rather an achievable remedy that would help correct wage discrimination in our society. Eliminating wage disparities between men and women in comparable jobs in the Federal sector and establishing bias-free job evaluations would encourage the private sector to follow suit.

Thank you, Senator Stevens, for asking us to testify here. I will be happy to answer any questions you have.

Senator STEVENS. Thank you. I do have a question, but I will wait for Ms. Stein to make her statement.

Ms. STEIN. Thank you, Mr. Chairman. My name is Eileen Stein, and I am the chair of the National Committee on Pay Equity and a former general counsel of the U.S. Commission on Civil Rights.

The National Committee on Pay Equity has over 300 organizational and individual members, including international labor unions, women's groups and civil rights groups, and it is the only national coalition working exclusively to achieve equal pay for work of comparable value.

In our written testimony, which we have submitted and which I will summarize this morning, we have commented on several recent activities on pay equity, beginning with our polling results concerning public attitudes toward pay equity and then addressing the remarks since the 1985 GAO Report on pay equity, and finally giving an update on State-by-State pay equity activities.

Some insight into public opinion on the subject of pay equity is provided by a national opinion poll commissioned by the National Committee on Pay Equity, which showed that 69 percent of U.S. workers think women are not paid as fairly as men for the work they do, and the reason they most frequently cite for this disparity is sex discrimination.

To solve this problem, four out of five working Americans surveyed support the principle of pay equity. The survey was conducted by Marttila and Kiley, a Boston polling firm. A summary of the poll is attached to our written testimony. Over 1,000 working Americans, including equal numbers of men and women, were selected at random and contacted by telephone. The survey was designed to ascertain working people's attitudes toward the wage gap between men and women.

Among the conclusions were these:

In unprompted responses, both men and women most frequently point to discrimination as the primary cause of the wage gap.

Eighty-three percent of those polls said they believe the wage gap—defined as women earning roughly 60 percent of what men earn—was a serious problem that we should correct.

A majority of those surveyed believe the most important goal of the pay equity struggle is the elimination of a person's sex as a factor in determining wages.

Finally, a majority of those surveyed believe that occupations dominated by women—nursing, teaching, and clerical work—are underpaid.

In addition, 61 percent of those surveyed said they believe that if most nurses and secretaries were men, the jobs would pay a lot better than they do. This poll shows that women and men care very much about fairness, and the grassroots support of pay equity is strong and growing. These voices can no longer be ignored.

Another gratifying recent development with respect to pay equity is the GAO report requested by, among others, the chairman of this subcommittee. The National Committee on Pay Equity commends and appreciates the General Accounting Office for its thorough investigation into the technical and practical aspects of eliminating wage discrimination by performing a pay equity study of the Federal classification and wage-setting system.

It is important that congressional Members have access to a detailed explanation of how to determine the portion of the wage gap which is due to discrimination.

The committee thinks it is crucial that any steering committee set up to conduct a pay equity study include representatives of the affected groups, and we were pleased that GAO recommended this approach.

The pay equity studies which have been conducted with which we are familiar focus on a job content analysis of a particular work force. Economic analysis is usually used to look at the overall wage gap and not specific occupations within the workplace.

If Congress decides that a pay equity study should include both a job content and an economic analysis, it is important that only human capital factors which are job-related be included. For example, it may be appropriate to consider years of education. It is not appropriate to consider marital status.

Therefore, each human capital factor considered should directly affect the job. The GAO study provides a useful foundation for Congress to move forward on achieving pay equity for all workers. While GAO looked into the wage gap between men and women in the Federal sector, NCPE thinks it is also important to look into the wage gap between whites and people of color. While pay equity is the single most important issue affecting all women seeking economic equity in the work place, the issue is even more significant to women of color who continue to suffer the brunt of economic discrimination in today's society.

On the average, women who work full time year round are paid about 65 cents for every $1 paid to men. However, for women of color, the gap is greater. For every man's dollar earned in 1984, black women earned only 59 cents, and Hispanic women, only 55 cents. Women of color face the twin barriers of gender and racial discrimination.

In addition, as statistics set forth in our written testimony indicate, women of color are concentrated into even fewer occupations with lower wages than white women. It is for these reasons that at least two States to date, New York and New Jersey, have included both race- and sex-based job segregation in their job evaluation studies.

The 1982 through 1985 contracts between New York and the Civil Service Employees Association, AFSCME 1000, funded a study to determine if there is pay equity for women and minorities.

The $500,000 project is the first to examine the issue of pay equity for both women and minorities. The Center for Women in Government at the State University in Albany, a founding member of the National Committee on Pay Equity, is coordinating the project. New Jersey's Task Force on Equitable Compensation, established by statute in 1984, is required to review all State job titles with 15 or more employees in which at least 70 percent are of one sex or in which the Civil Service Department determines that one race or national origin is disproportionately represented.

Certainly, the goal of economic equality for women of color cannot be realized until concerted efforts such as these are made to eradicate the job and wage discrimination based on both race and sex that undermines the full economic potential of the American labor force.

Leaders in State government are addressing the need for pay equity with a variety of creative legislation and policy solutions such as these two. Together, with unions which are aggressively bargaining for nondiscriminatory pay, State governments are leading the national movement for pay equity. In addition, there are other initiatives being taken in States by unions and by individuals.

The National Committee on Pay Equity has compiled information from several recent surveys regarding the increasing number and diversity of actions being taken in States regarding the pay equity issue. Activities in the States take many forms. According to the information available to us, 45 States have done at least some type of information and data collection concerning the issue, focusing on the wage gap and its relation to sex- or race-based job segregation within their own borders.

Thirty-nine States have conducted or are now conducting some type of preliminary information and data collection on pay equity. Activities included in this category are general studies of the issue, public hearings, monitoring other States' activities and preliminary examinations of pay equity in the civil service which stop short of a full or pilot job evaluation study.

Thirty-four States have set out a specialized task force or commission to concentrate on the area of pay equity, either by doing preliminary research or by overseeing a job evaluation study.

Fifteen States have set up task forces to conduct information-gathering activities but have not begun a formal job evaluation study.

Ten States have adopted pay equity policies through legislation. Alaska, incidentally, is currently the only State to specify unequal pay for work of comparable character as an unfair employment practice.

Twenty-two of the States have conducted or are conducting job evaluation studies addressing comparable worth, either pilot studies or comprehensive studies.

Sixteen States have undertaken such studies but have not yet implemented them. However, six States have taken some action toward implementing their job evaluation studies in terms of making adjustments in the wages of sex-segregated positions which were found to be undervalued. Implementation means moneys have been appropriated by the legislature or salary increases have actually occurred.

States which have begun implementation are Idaho, Iowa, Minnesota, New Mexico, South Dakota, and Washington.

Minnesota passed legislation in 1982 implementing the results of its job evaluation study and establishing a pay equity policy for State workers. In 1984, another piece of legislation was passed which extended the policy to include local governments. Local governments are required to have in place by 1987 job evaluation systems designed to achieve pay equity.

Lawsuits which are based on underpayment for sex- or race-dominated jobs in relation to other positions determined to be of comparable value to the employer have been filed by unions and individuals in at least 13 States. The filing of EEOC charges is not included in this number.

Only five States have taken no specific action toward addressing the issue of pay equity. These States are Arizona, Arkansas, Delaware, Georgia, and Oklahoma.

In conclusion, the wage gap is not new, but what is new is the proliferation of actions aimed at eliminating sex-based and race-based wage discrimination. As our testimony has detailed, pay equity advocates have come a long way in the last 6 years since the National Committee on Pay Equity was founded. There is still, however, a long way to go.

The National Committee on Pay Equity will continue its efforts to reach out to individuals and groups to present the possibilities of pay equity and to provide strategy advice in their own workplace or areas. We stand ready to assist those Members of Congress who are working to implement pay equity to give full expression to the dignity and potential of all our citizens.

Thank you, Mr. Chairman.

Senator STEVENS. Thank you very much, Ms. Stein.

Ms. Argana, you said that you would ask the committee to consider conducting the economic analysis first, followed by a job content study. I have to clarify that, because it sounds like a pretty good idea.

Do you believe that there could be two independent studies and that the committee ought to really have the result of the first before the second is undertaken?

Ms. ARGANA. Yes, I do think that is possible, and I think that would be beneficial to have economic studies done first and then the job content analysis. I think that is better sequentially.

Senator STEVENS. You would recommend them sequentially?

Ms. ARGANA. Yes.

Senator STEVENS. That one be completed before the other one is done?

Ms. ARGANA. Yes. That is correct.

Senator STEVENS. Thank you very much.

I thank you, Ms. Stein. I think that was a very interesting review. I am, of course, familiar with what is going on in my State. Apparently there have been no problems that I have heard of so far. I thank you very much for appearing today and for helping us complete this record.

[The prepared statements of Ms. Argana, with an attachment, and Ms. Stein, with attachments, follow:]

TESTIMONY
OF
FEDERALLY EMPLOYED WOMEN
BEFORE
SENATE GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON CIVIL SERVICES AND GENERAL SERVICES
ON
PAY EQUITY

CHAIRPERSON STEVENS, THANK YOU FOR ASKING FEDERALLY EMPLOYED WOMEN (FEW) TO TESTIFY HERE TODAY. FEW IS AN INTERNATIONAL MEMBERSHIP ORGANIZATION REPRESENTING WOMEN IN THE FEDERAL GOVERNMENT THROUGHOUT THE UNITED STATES AND FOREIGN NATIONS. FEW WAS FOUNDED IN 1968 TO ADVOCATE EQUAL OPPORTUNITY AND FOSTER FULL POTENTIAL FOR WORKING WOMEN IN THE FEDERAL SECTOR.

THE ISSUE OF PAY EQUITY IS AN IMPORTANT AND TIMELY ISSUE. THE BOARD OF DIRECTORS OF FEDERALLY EMPLOYED WOMEN VOTED IN FEBRUARY 1985 TO DESIGNATE THE SUBJECT OF PAY EQUITY AS ONE OF FEW'S LEGISLATIVE PRIORITIES (SEE ATTACHED POSITION PAPER).

WOMEN HAVE ALWAYS EARNED LESS WAGES THAN MEN IN OUR SOCIETY. THE PERSISTENT WAGE GAP HAS RESULTED IN WOMEN BEING LESS ABLE TO SUPPORT THEMSELVES AND THEIR FAMILIES AND REFLECTS THE DEEP ROOTED SEX DISCRIMINATION THAT IS PREVALENT. THE WAGE GAP WILL NOT GO AWAY BY ITSELF. THE PROPONENTS OF A FREE MARKET SYSTEM INSIST THAT SUPPLY AND DEMAND FACTORS DETERMINE WAGES, AND THEREFORE, WOMEN RECEIVE WAGES IN ACCORDANCE WITH THEIR WORTH TO SOCIETY. SUPPLY AND DEMAND FUNCTIONS, HOWEVER, CONTAIN DISCRIMINATORY ATTITUDES THAT CAN ONLY BE CORRECTED BY LEGISLATION, LITIGATION, AND COLLECTIVE BARGAINING.

A LARGE PORTION OF THE EARNINGS GAP BETWEEN MEN AND WOMEN IS A RESULT OF WOMEN WORKING IN DIFFERENT OCCUPATIONS THAN MEN. WOMEN ARE EXCLUDED FROM

HIGH WAGE JOBS WHERE THE MAJORITY OF THE WORKERS ARE MALE AND CROWDED INTO JOBS WITH LOWER RATES OF PAY, PRESTIGE, AND SHORT PROMOTIONAL LADDERS. WOMEN AND MEN ARE OFTEN IN JOBS WITH COMPARABLE DUTIES AND RESPONSIBILITIES, YET THE JOBS DOMINATED BY MALE EMPLOYEES ARE HIGHER WAGE OCCUPATIONS. IN FACT, STUDIES HAVE SHOWN THAT AS WOMEN ENTER AN OCCUPATION IN LARGE NUMBERS, THE WAGES FOR BOTH MEN AND WOMEN IN THAT OCCUPATION DECLINE. A NATIONAL ACADEMY OF SCIENCE STUDY FOUND THAT EACH ADDITIONAL PERCENTAGE POINT OF WOMEN IN AN OCCUPATION EQUALED FORTY TWO DOLLARS LESS IN OVERALL WAGES. OCCUPATIONS THAT HAVE "TURNED" (WHERE THE PREDOMINATE SEX IN AN OCCUPATION CHANGES FROM MALE TO FEMALE) ILLUSTRATE THIS PHENONOMEN. IF DETAILED OCCUPATIONS ARE STUDIED OVER A PERIOD OF TIME, IT IS FOUND THAT IN NEARLY ALL OCCUPATIONS WHERE THE MAJORITY OF WORKERS HAVE SWITCHED FROM MALE TO FEMALE, THAT THE WAGES FOR ALL WORKERS IN THOSE OCCUPATIONS DECLINE.

A WAGE DIFFERENTIAL BETWEEN MALE AND FEMALE WORKERS IS ALSO PREVALENT IN THE FEDERAL WORKFORCE. FEDERALLY EMPLOYED WOMEN CAN EXPECT TO EARN SIXTY-THREE PERCENT OF THE WAGES OF ALL MEN. A LARGE PORTION OF THIS WAGE GAP CAN BE DIRECTLY ATTRIBUTED TO OCCUPATIONAL SEGREGATION WITHIN THE FEDERAL WORKPLACE. ALTHOUGH WOMEN COMPRISE NEARLY HALF OF THE WORKERS IN THE GENERAL SCHEDULE (GS) CLASSIFICATION SYSTEM, SEVENTY-THREE PERCENT OF ALL WOMEN ARE IN GS GRADES ONE THROUGH EIGHT. ONLY TWENTY-TWO PERCENT OF ALL GS SUPERVISORS ARE WOMEN. IF THE OCCUPATIONAL SERIES ARE EXAMINED, WOMEN COMPRISE SEVENTY PERCENT OF ALL GENERAL ADMINISTRATIVE, CLERICAL, OFFICE SERVICES JOBS (SERIES 0300), BUT ONLY FIVE PERCENT OF THE ENGINEER AND ARCHITECT SERIES (SERIES 0800). ADDITIONALLY, WITHIN THE FEMALE DOMINATED OCCUPATIONS, WOMEN ARE STILL CROWDED INTO THE LOWEST GRADES.

MALE-FEMALE WAGE DIFFERENTIALS AND OCCUPATIONAL SEGREGATION IS NOT LIMITED TO JUST THE GS CLASSIFICATION SYSTEM IN THE FEDERAL SECTOR. ALTHOUGH WOMEN COMPRISE ONLY NINE PERCENT OF ALL WAGE GRADE EMPLOYEES, EIGHTY-SIX PERCENT OF ALL WOMEN WITHIN THAT SYSTEM ARE CONCENTRATED IN GRADES ONE THROUGH EIGHT. OCCUPATIONAL SEGREGATION DIRECTLY RESULTS IN LOWER WAGES FOR WOMEN. THE AVERAGE SALARY FOR FEDERAL WOMEN WORKERS IN THE GS SYSTEM IS $18,864 PER YEAR AS COMPARED TO $30,229 PER YEAR FOR MEN. IN THE WAGE GRADE SYSTEM WOMEN EARN $17,848 PER YEAR AS COMPARED TO $22,479 FOR MEN.

THE OCCUPATIONAL CROWDING OF WOMEN IN CERTAIN JOB CATEGORIES COUPLED WITH THE WAGE DATA MAKES A STRONG CASE FOR DISCRIMINATORY PRACTICES IN THE FEDERAL GOVERNMENT. PAY EQUITY FOR FEDERALLY EMPLOYED WOMEN WOULD ENSURE THAT FEDERAL EMPLOYEES, REGARDLESS OF SEX, WOULD BE PAID EQUALLY FOR JOBS THAT ARE OF COMPARABLE VALUE TO THE GOVERNMENT AS THE EMPLOYER (IN TERMS OF SKILL, EFFORT, RESPONSIBILITY, AND WORKING CONDITIONS). INHERENT IN THIS DEFINITION IS THE ASSUMPTION THAT THE EMPLOYER HAS A UNIFIED JOB EVALUATION SYSTEM WHICH CAN ASSIGN RELATIVE VALUE TO ALL JOBS, CREATING A SCHEME OF INTERNAL EQUITY. CAUTION MUST BE EXECUTED, HOWEVER, BECAUSE THE NATURE OF JOB EVALUATIONS MAKES IT POSSIBLE FOR SEXUAL BIAS TO ENTER. FOR EXAMPLE, WHEN DETERMINING WHICH FACTORS TO INCLUDE IN A JOB EVALUATION AND TO WHAT DEGREE THEY SHOULD BE WEIGHTED, IT IS IMPORTANT NOT TO ASSUME THAT THE SKILLS INVOLVED WITH A 'WOMAN'S JOB" ARE ASSIGNED LESS IMPORTANCE JUST BECAUSE A WOMAN PERFORMS THOSE SKILLS.

THE GENERAL ACCOUNTING OFFICE (GAO) IN ITS REPORT, "OPTIONS FOR CONDUCTING A PAY EQUITY STUDY OF THE FEDERAL PAY AND CLASSIFICATION SYSTEMS" ILLUSTRATES HOW THE FEDERAL CLASSIFICATION SYSTEMS CAN BE STUDIED FOR SEX BASED WAGE

DISCRIMINATION. THE REPORT SUGGESTS UTILIZING TWO METHODOLOGIES -- CONDUCTED EITHER SIMULTANEOUSLY OR SEQUENTIALLY -- A LABOR MARKET ANALYSIS AND A JOB CONTENT STUDY. ALTHOUGH FEW HAS NO DIFFICULTY WITH THIS SUGGESTION, WE WOULD ASK THE COMMITTEE TO CONSIDER CONDUCTING THE ECONOMIC ANALYSIS FIRST IN ORDER TO DETERMINE THE AMOUNT OF SEX DISCRIMINATION IN THE FEDERAL WAGE SYSTEM FOLLOWED BY A JOB CONTENT STUDY TO DETERMINE THE EXISTENCE OF SEX BASED WAGE DISCRIMINATION IN EACH INDIVIDUAL JOB CATEGORY. CONDUCTING BOTH TYPES OF ANALYSES WILL UTLIMATELY STRENGTHEN THE RESULTS OF THE STUDY.

WHEN CONDUCTING AN ECONOMIC ANALYSIS OF THE FEDERAL WAGE SYSTEMS, IT IS NECESSARY TO ENSURE THAT SEXUAL BIAS DOES NOT ENTER THE METHODOLOGY. EXAMINATION OF CURRENT LITERATURE DOCUMENTS THAT WOMEN ARE EMPLOYED IN DIFFERENT OCCUPATIONS THAN MEN (IN BOTH THE PRIVATE AND PUBLIC SECTOR) AND THAT THOSE OCCUPATIONS THAT ARE FEMALE INTENSIVE HAVE LESS EARNINGS POTENTIAL THAN THOSE OCCUPATIONS THAT ARE MALE INTENSIVE. IN DISPUTE, HOWEVER, IS THE ORIGIN OF OCCUPATIONAL SEGREGATION: WHETHER WOMEN CHOOSE TO BE IN LOW WAGE OCCUPATIONS, WHETHER WOMEN ARE SYSTEMATICALLY EXCLUDED FROM HIGH WAGE POSITIONS, AND THE REMEDY FOR NARROWING THE EARNINGS DIFFERENTIAL BETWEEN MEN AND WOMEN.

THE GAO REPORT OFFERS SEVERAL ECONOMIC THEORIES THAT CAN BE UTILIZED IN A LABOR MARKET ANALYSIS OF A WAGE SYSTEM. THEY CITE THE POLACHEK AND MINCER ARGUMENT THAT WOMEN ACCUMULATE LESS HUMAN CAPITAL SUCH AS EDUCATION, WORK EXPERIENCE, AND TRAINING, AND THEREFORE, HAVE A LOWER MARGINAL PRODUCT THAN MEN. THIS LOWER MARGINAL PRODUCT TRANSLATES INTO A LOWER WAGE RATE FOR WOMEN WORKERS. THEREFORE, ACCORDING TO POLACHEK, THE WAGE GAP BETWEEN MEN AND WOMEN IS SIMPLY A REFLECTION OF DIFFERENT LEVELS OF PRODUCTIVITY.

POLACHEK ALSO POINTS TO WOMENS' LACK OF CONTINUOUS WORK EXPERIENCE AS THE MAJOR FACTOR IN WOMEN ACCUMULATING LESS HUMAN CAPITAL THAN MEN. BECAUSE WOMEN PLAN A DISCONTINUOUS WORK PATTERN, THEY TEND TO ENTER THOSE OCCUPATIONS THAT REQUIRE LESS TRAINING AND THAT WILL NOT BE DETRIMENTAL IF THEY TAKE TIME OFF. HE CONTINUES TO THEORIZE THAT WOMEN ALSO INVEST LESS HUMAN CAPITAL IN HIGHER PAYING MALE INTENSIVE OCCUPATIONS DUE TO PERCEIVED NOTIONS OF THEIR LABOR MARKET ACTIVITY AND VOLUNTARILY SEGREGATE THEMSELVES FROM HIGH PAYING OCCUPATIONS WHICH WOULD PENALIZE THEM FOR DISCONTINUOUS WORK EXPERIENCE. THIS THEORY DOES NOT COMPLETELY AGREE WITH THE LABOR MARKET ACTIVITY OF MEN AND WOMEN IN THE CIVIL SERVICE. WHEN COMPUTING THE NUMBER OF MEDIAN YEARS WORKED FOR MALE AND FEMALE FEDERAL WORKERS, IT IS FOUND THAT WOMEN WORK ON THE AVERAGE ONLY ONE YEAR LESS THAN MEN IN THE CIVILIAN FEDERAL WORKFORCE. IN ADDITION, CRITICS OF THE HUMAN CAPITAL THEORY HAVE POINTED OUT THAT THERE IS NO EVIDENCE THAT WOMEN VOLUNTARILY SEGREGATE THEMSELVES IN THE LABOR MARKET NOR CHOOSE OCCUPATIONS ON THE BASIS OF OPTIMAL EARNINGS IN AN INTERRUPTED WORK LIFE. THE HUMAN CAPITAL THEORY BLAMES WOMEN FOR THEIR LOW WAGES AND SEEMS TO SUGGEST THAT IF WOMEN WERE TO ENTER MALE OCCUPATIONS AND REMAIN STAYERS IN THE WORKFORCE, THAT WAGE DISCRIMINATION WOULD END. HUMAN CAPITALISTS PUT LITTLE EMPHASIS ON DISCRIMINATION BY EMPLOYERS AS AN INCENTIVE TO KEEP WOMEN OUT OF THE MALE JOBS.

BORJAS (1983) HAS DOCUMENTED THAT A WAGE DIFFERENTIAL DOES INDEED EXIST BETWEEN MEN AND WOMEN EMPLOYEES IN THE FEDERAL GOVERNMENT. HE FOUND THAT SIGNIFICANT WAGE DIFFERENTIALS EXISTED, EVEN WHEN HUMAN CAPITAL CHARACTERISTICS WERE SIMILAR. ANOTHER STUDY PERFORMED BY TAYLOR (1979) CONFIRMED THESE RESULTS.

A SECOND CONCEPT INCLUDED IN THE GAO REPORT IS THE OCCUPATIONAL SEGREGATION THEORY THAT OFFERS A DIFFERENT EXPLANATION FOR THE MALE-FEMALE WAGE DIFFERENTIAL. THIS IDEA SUGGESTS THAT THE ARTIFICIALLY EXPANDED SUPPLY OF WOMEN WORKERS IN FEMALE INTENSIVE JOBS CAUSES A LOWER MARGINAL REVENUE PRODUCT FOR WOMEN. BARBARA BERGMANN HAS EXPANDED ON THIS THEORY TO EXPLAIN WOMEN'S LOW WAGE RATE. SHE POSTULATES THAT THE OVERCROWDING OF WOMEN IN A LIMITED NUMBER OF OCCUPATIONS CAUSES AN ABUNDANT SUPPLY OF WOMEN WORKERS WHICH RESULTS IN A DEPRESSED WAGE RATE. IN PRACTICE, MARGINAL REVENUE PRODUCTS ARE VERY DIFFICULT TO MEASURE, THEREBY MAKING IT NEARLY IMPOSSIBLE TO DETERMINE IF WOMEN ARE EARNING WAGES BASED ON A PERCEIVED LOWER PRODUCTIVITY THAN MEN.

THE THIRD ECONOMIC ANALYSIS THAT IS INCLUDED IN THE GAO REPORT IS THE DUAL LABOR MARKET CONCEPT. THE DUAL LABOR MARKET MODEL CONTENDS THAT WOMEN FILL THE RANKS OF CLERICAL WORKERS WHO REMAIN AT THEIR PRESENT STATUS FOR ALL THEIR WORKING LIVES WHILE MEN ENTER FIRMS AS RESEARCH ASSISTANTS OR MANAGEMENT TRAINEES AND QUICKLY RISE TO EXECUTIVE LEVEL POSITIONS. MANY EMPLOYEES ASSUME THAT WOMEN ARE JOB LEAVERS, THEREFORE COSTING THE FIRM REVENUE IF A WORKER LEAVES AFTER RECEIVING TRAINING. STUDIES SHOW, HOWEVER, THAT ALTHOUGH WOMEN HAVE A GREATER TENDENCY TO DROP-OUT OF THE LABOR MARKET THAN MEN, MEN ARE MORE LIKELY TO CHANGE FIRMS WITH AN OCCUPATION THAN WOMEN (HABER, LAMAS, AND GREEN, 1983). IN ADDITION, THIS SITUATION IS MORE LIKELY TO REFLECT PRIVATE SECTOR PRACTICES WHERE THERE IS MORE MOBILITY BETWEEN FIRMS AND GREATER PORTABILITY OF BENEFITS THAN IN THE FEDERAL GOVERNMENT WHERE THERE IS MOVEMENT BETWEEN AGENCIES AND THE PRESENT BENEFIT STRUCTURE ENCOURAGES PEOPLE TO STAY.

ALTHOUGH FEW SUPPORTS THE IMPLEMENTATION OF AN ECONOMIC ANALYSIS OF THE FEDERAL CLASSIFICATION SYSTEM IN A PAY EQUITY STUDY, WE URGE CAUTION IN INTERPRETING THE RESULTS. ALTHOUGH LABOR MARKET ANALYSIS IS A VALID APPROACH TO DETERMINE SEX BASED WAGE DISCRIMINATION, THERE ARE MANY CONFLICTING THEORIES REGARDING THE CAUSES AND EXTENT OF THIS DISCRIMINATION.

THE GAO REPORT ALSO OFFERS THE JOB CONTENT APPROACH AS A METHOD TO CONDUCT A PAY EQUITY STUDY OF THE FEDERAL CLASSIFICATION SYSTEMS. IN THIS ANALYSIS, IT IS ASSUMED THAT JOBS ARE PAID BASED ON THEIR WORTH TO THE FEDERAL GOVERMNET. THE GAO REPORT GOES INTO SOME DETAIL ON POINT FACTOR EVALUATION SYSTEMS EITHER BY MEANS OF THE A PRIORI METHOD OR A POLICY CAPTURING METHOD. FEW ENDORSES THIS APPROACH TO STUDY THE FEDERAL CLASSIFICATION SYSTEMS FOR SEX BASED WAGE DISCRIMINATION AS THIS METHOD DIRECTLY ADDRESSES THE ISSUE OF COMPARABLE WORTH -- WHETHER JOBS OF EQUAL VALUE ARE BEING PAID EQUALLY. IF A POLICY CAPTURING METHOD IS USED, HOWEVER, WE WOULD URGE THAT THE STUDY INCORPORATE THE SUGGESTIONS OF GAO AND MODIFY THE METHOD TO ENSURE THAT INHERENT SEX BIASES PREVALENT IN THE SYSTEMS ARE ELIMINATED.

FEW WOULD URGE THE COMMITTEE TO BE CAUTIOUS IN CONSIDERING THE OFFICE OF PERSONNEL MANAGEMENT AS A POSSIBILITY FOR CONDUCTING THIS PAY EQUITY STUDY BECAUSE THEIR RECENT HISTORY HAS SHOWN THAT OPM IS NOT COMMITTED TO THE REALIZATION OF PAY EQUITY IN THE FEDERAL WORKFORCE. FEW WOULD SUGGEST CONSIDERING EITHER HIRING AN OUTSIDE CONSULTING FIRM TO PERFORM THE STUDY OR TO CONSIDER AN AGENCY SUCH AS THE GENREAL ACCOUNTING OFFICE OR THE NATIONAL ACADEMY OF SCIENCES.

FEW RECOMMENDS THAT A PAY EQUITY STUDY OF THE FEDERAL GOVERNMENT INCLUDE BOTH THE GS AND FWS CLASSIFICATION SYSTEMS. EIGHTY-THREE PERCENT OF ALL FEDERAL WORKERS ARE UNDER THESE PAY SYSTEMS, SO SUCH A STUDY WOULD ENCOMPASS NEARLY ALL THE FEDERAL WORKFORCE. WE WOULD ALSO SUGGEST DEVELOPING ADDITIONAL CRITERIA TO STUDY THE REMAINING CLASSIFICATION SYSTEMS AT A LATER DATE.

FEW ALSO ENDORSES THE CONCEPT OF A STEERING COMMITTEE TO IMPLEMENT AND FOLLOW THE PROCESS OF THE PAY EQUITY STUDY. WE CONCUR WITH GAO'S SUGGESTION THAT THE MEMBERS OF THE STEERING COMMITTEE SHOULD PROVIDE A WIDE BASED REPRESENTATION ON THE ISSUE OF PAY EQUITY AND INCLUDE MEMBERS OF CONGRESS, REPRESENTATIVES FROM EMPLOYEE ORGANIZATIONS AND WOMEN'S ORGANIZATIONS, AND A REPRESENTATIVE FROM OPM. WE ALSO AGREE WITH THE IDEA OF A TECHNICAL COMMITTEE TO ASSIST THE STEERING COMMITTEE. AS AN ORGANIZATION WHICH REPRESENTS WOMEN IN THE FEDERAL GOVERNMENT, FEW WOULD ASK TO BE CONSIDERED TO SIT ON THIS STEERING COMMITTEE.

FEW APPLAUDS GAO IN THE EFFICIENT MANNER IN WHICH THEY PRODUCED A REPORT THAT DETAILS THE POSSIBILITIES OF THE IMPLEMENTATION OF A PAY EQUITY STUDY FOR THE FEDERAL GOVERNMENT. THIS REPORT CONCLUDES THE ARGUMENTS OF WHETHER SUCH A STUDY IS A POSSIBILITY.

THERE ARE MANY COMPELLING REASONS WHY PAY EQUITY SHOULD BE REALIZED IN OUR SOCIETY. WOMEN HAVE THE SAME EXPENSES AS MEN AND SHOULD NOT BE PENALIZED BECAUSE OF THEIR SEX. IN ADDITION, WOMEN WHO ARE EMPLOYED BY THE FEDERAL GOVERNMENT CONTRIBUTE AS MUCH AS MALE WORKERS TO THE EFFICIENCY AND PRODUCTIVITY OF THE FEDERAL GOVERNMENT. THE WAGE GAP HAS CONTRIBUTED TO THE GROWING NUMBERS OF WOMEN AND CHILDREN WITH INCOME BELOW THE POVERTY

LEVEL. WOMEN HEADING HOUSEHOLDS AS WELL AS ELDERLY WOMEN ARE INCREASINGLY LIVING IN POVERTY. RETIREMENT ANNUITIES ARE DEPENDENT ON ONE'S LIFETIME EARNINGS. LOW WAGES DIRECTLY TRANSLATE INTO SMALL PENSIONS. THIS IS A PROBLEM SHARED BY WOMEN IN BOTH PRIVATE AND PUBLIC EMPLOYMENT.

FEW URGES THIS COMMITTEE TO VIGOROUSLY PURSUE THE ISSUE OF PAY EQUITY IN THE FEDERAL SECTOR AS WELL AS IN THE PRIVATE SECTOR. MANY STATES ARE SUCCESSFULLY CONDUCTING PAY EQUITY STUDIES AND CORRECTING THEIR STATE CLASSIFICATION SYSTEMS FOR SEX BASED WAGE DISCRIMINATION. THE CONCEPT OF PAY EQUITY IS NOT A MYSTIFYING RADICAL PLOT THAT WILL CAUSE CHAOS IN OUR ECONOMY AS ITS OPPONENTS HAVE PORTRAYED IT. BUT RATHER AN ACHIEVEABLE REMEDY THAT WOULD HELP CORRECT WAGE DISCRIMINATION IN OUR SOCIETY. ELIMINATING WAGE DISPARITIES BETWEEN MEN AND WOMEN IN COMPARABLE JOBS IN THE FEDERAL SECTOR AND ESTABLISHING BIAS-FREE JOB EVALUATIONS WOULD ENCOURAGE THE PRIVATE SECTOR TO FOLLOW SUIT.

THANK YOU CHAIRPERSON STEVENS FOR ASKING US TO TESTIFY HERE TODAY. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS THE COMMITTEE HAS.

APPENDIX I - FEW POSITION PAPER ON PAY EQUITY
AS APPROVED BY THE BOARD OF DIRECTORS,
FEBRUARY 1985

f.e.w.
federally employed women • an organization for opportunity & equality for women in government
(202) 638-4404 • 1010 vermont avenue, northwest, washington, d.c. 20005

PAY EQUITY

Pay equity (or comparable worth) is an issue of prime importance. FEW strongly SUPPORTS the concept of pay equity: equal pay for work of comparable value. After the failure of the ratification of the ERA, it became increasingly important to pass pay equity legislation in order to combat sex discrimination in the workplace. Women employed by the federal government earn 63 cents for every dollar earned by men in the federal government. This wage gap is largely due to the fact that federal women are crowded into the lowest General Schedule (GS) grades. 75 percent of all federal women are in GS grades 1 through 8. Only 6 percent of all workers in the Executive Pay System are women. Little progress is evident in the increase of women or minorities in the middle to higher grades. In 1981, the median earnings for federal women was $14,414/year as compared to $22,676 for men.

The General Schedule was designed in 1949 in order to preserve both the pay and job relationships that were established in the 1923 Classification Act. In the 1970s, the job evaluation and ranking methods were further defined by the addition of the Factor Evaluation System (FES). FES is a progressive system in that it assigns quantitative measurements instead of narrative interpretations for assigning values (and hence wages) to different occupations. Instead of devising a bias free objective evaluation system, however, a ranking system emerged that made a subjective system more systemitized with quantitative weights. Outdated standards that have traditionally defined women's jobs and men's jobs were not amended. For example, operating machines is more highly ranked than taking care of people or heavy lifting is more highly valued than repeated light lifting.

FEW urges the vigorous pursuit of the realization of pay equity in the federal sector. The public sector has been at the forefront of the pay equity issue since its inception. Most pay equity legislation and regulations address comparable wages in the federal labor market. Executive Order 11246 forbids discrimination based on sex in federal contracts while Executive Order 11478 mandates equal employment opportunities in the federal government. The Civil Service Reform Act of 1978 is the only federal law that mandates the implementation of comparable worth as equal pay for work of equal value. Most litigation involving pay equity cases has been initiated by public employees' unions and centers around state and local female employees' discrimination. Yet, there has never been a study of the federal wage system for sex based wage discrimination. FEW considers the study of pay equity in the federal government of utmost importance.

FEW also urges strong enforcement of Title VII of the Civil Rights Act which states that it is illegal to discriminate in employment on the basis of sex in hiring, classification, promotion, compensation, fringe benefits, and discharge of an employee. Any erosion of present Title VII enforcement will reverse the progress women have made in today's labor market.

Testimony of

Eileen Stein, Chair

National Committee on Pay Equity

My name is Eileen Stein. I am Chair of the National Committee on Pay Equity, representing the Women's Legal Defense Fund, and a former General Counsel of the U.S. Commission on Civil Rights. The National Committee on Pay Equity, founded in 1979, is the only national coalition working exclusively to achieve equal pay for work of comparable value. The Committee has over 280 organizational and individual members, including international labor unions and major women's and civil rights groups, as well as legal associations and educational and grassroot groups.

The purposes of the National Committee include:

*Eliminating race and sex discrimination from the wage setting process;

*Providing leadership, coordination and strategy direction to members and other pay equity advocates;

*Providing assistance and information to the growing number of public officials, labor unions, women's groups and other organizations and individuals pursuing pay equity;

*Stimulating new pay equity activities; and

*Bringing national and local attention to the issue.

In our testimony today we would like to comment on several recent activities on pay equity, beginning with our polling results concerning public attitudes towards pay equity.

Second, we would briefly like to address the March 1, 1985 GAO Report on pay equity.

Finally, we would like to give you an update on state-by-state pay equity activities.

I. National Committee on Pay Equity's Poll on Public Attitudes

Regardless of the current Administration's efforts to trivialize the problem of wage discrimination against women and minorities, the issue of pay equity will not go away. All workers are entitled to fair wages, and the pay equity movement will continue to grow until wage discrimination is eliminated. Indeed, a national poll commissioned by the National Committee on Pay Equity showed that 69% of U.S. workers think women are not paid as fairly men for the work they do, and the reason they most frequently cited for this disparity was sex discrimination. To solve this problem, four out of five working Americans surveyed support the principle of pay equity.

The survey was conducted by Marttila and Kiley, a Boston polling firm. A summary of the poll is attached to this statement. Over one thousand working Americans, including equal numbers of men and women, were selected at random and contacted by telephone. The survey was designed to ascertain working people's attitudes toward the wage gap between men and women. Among its conclusions:

* In unprompted responses, both men and women most frequently point to discrimination as the primary cause of the wage gap.
* Eighty-three percent of those polled said they believed the wage gap (defined as women earning roughly sixty cents for every dollar men earn) was a serious problem that we should correct.
* A majority of those surveyed believe the most important goal of the pay equity struggle is the elimination of a person's sex as a factor in determining wages.
* A majority of those surveyed believe that occupations dominated by women -- nursing, teaching, and clerical work-- are underpaid. In

addition, sixty-one percent of those surveyed said they believed that if most nurses and secretaries were men,"the jobs would pay a lot better than they do."

Grassroots support of pay equity is strong and growing. The poll shows that women and men care very much about fairness. Their voices can no longer be ignored.

II. General Accounting Office (GAO) Report

The National Committee on Pay Equity appreciates and commends the General Accounting Office for its thorough investigation into the technical and practical aspects of eliminating wage discrimination by performing a pay equity study of the federal classification and wage setting system. It is important that Congressional members have access to a detailed explanation of how to determine the portion of the wage gap which is due to discrimination.

The Committee thinks it is crucial that any steering committee set up to conduct a pay equity study include representatives of the affected groups and was pleased that GAO recommended this approach.

While GAO looked into the wage gap between men and women in the federal sector, NCPE thinks it is also important to look into the wage gap between whites and people of color. This is addressed further in the section on race-based wage discrimination.

The pay equity studies which have been conducted focus on a job content analysis of a particular workforce. Economic analysis is usually used to look at the overall wage gap and not specific occupations within a workplace. If Congress decides that a pay equity study should include both a job content and an economic analysis, it is important that only human capital factors which are job related be included. For example, it may be appropriate to consider years of education. It is not appropriate to consider marital status. Therefore, each human capital factor considered should directly affect the job.

The GAO study provides a useful foundation for Congress to move forward on achieving pay equity for all workers.

III. The Importance of Looking At Race As Well As Sex In Evaluating Wage Discrimination

While pay equity is the single most important issue affecting all women seeking economic equity in the workplace, the issue is even more significant to women of color who continue to suffer the brunt of economic discrimination in today's society.

On the average, women who work full time, year-round are paid about 65c for every dollar paid to men.[2] However, for women of color, the gap is greater. For every man's dollar earned in 1984, Hispanic women earned 55c and Black women 59c [3]. Women of color face the twin barriers of gender and racial discrimination.

In addition, women of color are concentrated into even fewer occupations with lower wages than white women. For example, fifty-four percent of Black women are in two of the 12 major occupations--clerical and service workers--whereas 51 percent of white women are in those occupations.[4] Black women are more likely to be found in service (29.8 percent) or blue collar jobs (17.2 percent) than are white women (19.6 percent and 12.8 percent).[5] On the other hand, Black women are less likely to hold white collar jobs (clerical, sales, professional, managerial) than are white women.[6] More than 81 percent of Hispanic women are concentrated in clerical and blue collar (crafts, operatives and laborer) and service occupations--Mexican American - 82.6 percent; Puerto Rican- 81 percent; and Cuban American - 84.5 percent.[7]

It is for these reasons that at least two states to date--New York and New Jersey--have included both race- and sex-based job segregation in their job evaluation studies.

The 1982-85 contracts between New York and the Civil Service Employees Association, AFSCME Local 1000, funded a study to determine if there is pay equity for women and minorities. The $500,000 project is the first to examine the issue of pay equity for both women and minorities. The Center for Women in Government at the State University in Albany, a charter member of the National Committee on Pay Equity, is coordinating the project.

New Jersey's Task Force on Equitable Compensation, established by statute in 1984, is required to review all state job titles with 15 or more employees in which at least 70 percent are of one sex or in which the Civil Service Department determines that one race or national origin is disproportionately represented. The Task Force's interim report is due by June 1, 1985.

Certainly the goal of economic equality for women of color cannot be realized until concerted efforts such as these are made to eradicate the job and wage discrimination based on both race and sex that undermines the full economic potential of the American labor force.

IV. National Committee on Pay Equity State-By-State Survey

Leaders in state governments are addressing the need for pay equity with a variety of creative legislative and policy solutions. Together with unions which are aggressively bargaining for non-discriminatory pay, state governments are leading the national movement for pay equity. In addition, there are other initiatives being taken in states by unions and individuals.

The National Committee on Pay Equity has compiled information from several recent surveys regarding the increasing number and diversity of actions being taken in states regarding the pay equity issue.

We have identified state initiatives in 45 states. Activities in the states take many forms. We have generally attempted to classify these activities under the following categories:

(1) Information and Data Collection

(2) Existence of Pay Equity Task Force or Commission

(3) Pay Equity Policy

(4) Job Evaluation Study Addressing Pay Equity

(5) Implementation of Pay Equity Increases

(6) Law Suits

(7) Any Legislative Activity Concerning Pay Equity

The information in this summary is based primarily on a survey of recent reports, and is not meant to be a difinitive piece of primary research. Rather, it reflects an attempt to bring together information from several major surveys, which have recently been compiled (see attached source list). It is important to note that each source used to complete this survey employed different criteria in categorizing state activity. In some cases, conflicting information made categorization extremely difficult. The amount of detail available from these sources on the state job evaluation studies was also limited; supplemental research was conducted where possible. It is expected that these data will change quickly as new information becomes available to us.

States are moving rapidly to study the issue of pay equity. Forty-five states have done at least some type of information and data collection concerning the issue, focusing on the wage gap and its relation to sex- or race-based job segregation within their own borders. Most of the states have chosen to begin addressing the issue by examining pay inequity in their own workforces. Twenty-two states have conducted or are conducting job evaluation studies of the civil service, and many others are considering a future study and doing preliminary information-gathering. As mentioned previously, two of the states to date--New York and New Jersey--include both race- and sex-based wage discrimination in their job evaluation studies. Six of the states have already begun implementation of pay equity through salary increases significantly raising the salaries of traditionally female-dominated jobs.

(1) Information and Data Collection

Thirty-nine states have conducted or are now conducting some type of preliminary information and data collection on pay equity. (See attached chart.) Activities included in this category are general studies of the issue, public hearings, monitoring other states' activities, and preliminary examinations of pay equity in the civil service, which stop short of a full or pilot job evaluation study. Eight states are conducting only preliminary information or data collection on wage discrimination, independent of a task force or commission. They are: Colorado, Mississippi, Missouri, North Dakota, Pennsylvania, South Carolina, Tennessee,[8] and Texas.

(2) Formation of Pay Equity Task Force or Commission

Thirty-four states have set up a specialized task force or commission to concentrate on the area of pay equity, either by doing preliminary research or by overseeing a job evaluation study. Task forces may be appointed by the legislature or governor, or set up by the Personnel Department, Status of Women Commission, or other government department or commission.

Fifteen states have set up task forces to conduct information-gathering activities, but have not begun a formal job evaluation study. These are: Alabama, California, Florida, Hawaii, Indiana, Kansas, Kentucky, Louisiana, Michigan, Nebraska, Nevada, New Hampshire, Rhode Island, Utah and Virginia.

(3) Pay Equity Policy

Ten states have adopted pay equity policies through legislation. These are: Alaska, California, Hawaii, Idaho, Iowa, Maryland, Minnesota, Montana, New Jersey, and Washington.

California has a pay equity policy, but has not conducted a job evaluation study. A 1981 law established the policy and mandated an annual pay equity report by the Department of Personnel. Pay equity is a factor in collective bargaining with the state employees unions. However, California uses a qualitative job evaluation system. As part of its monitoring activities, the state gathers data on other states' compensation systems and compares California job classes to corresponding classes in other states.

Some states have comparable worth-type language in existing legislation, but the legislation has never been implemented nor has been interpreted as to whether or not it only covers equal pay for equal work situations. These states are, therefore, not included here as having comparable worth policies, e.g., fifteen states have language in their Equal Pay Acts, dating back prior to 1970 (see Comparable Worth: Technical Possibilities and Political Realities, Helen Remick, ed., Temple University Press, 1984).

Alaska is currently the only state to specify unequal pay for work of "comparable character" as an unfair employment practice. In 1980, the term "work of comparable character" was removed from Alaska's Equal Pay Act. At the same time, the Fair Employment Practices Law was modified to require equal pay for "work of comparable character."

Minnesota passed legislation in 1982, implementing the results of its job evaluation study and establishing a pay equity policy for state workers. In 1984, another piece of legislation was passed, which extended the policy to include local governments. Local governments are required to have in place, by 1987, job evaluation systems designed to achieve pay equity.

Most of the pay equity policies apply to the public sector only. However, Hawaii passed a non-binding resolution in 1981, which requests all employe in the state to adopt the concept of equal pay for work of comparable value within their organizations.

(4) Job Evaluation Study Addressing Comparable Worth

Several different types of job evaluation systems are in use, but the trend in recent years has been a shift from "qualitative" evaluation systems to "quantitative" (point factor) systems, which rank jobs within an organization by analyzing positions in terms of common factors with cumulative point values assigned to each position. Included in this category are states which have conducted pilot studies, i.e. Illinois and Ohio, as well as states which have conducted comprehensive studies.

In attempting to determine whether a job evaluation study addressed pay equity concerns, the following factors were considered:

(a) Year study was completed;

(b) Use of a quantitative system to compare dissimilar jobs using a set of common factors (usually skill, effort, responsibility, and working conditions);

(c) Comparison of the wages of jobs segregated by race or sex with wages for jobs of comparable value to the employer;

(d) An attempt to produce "internal equity" by including all jobs within a single wage and classification system; and

(e) Recommendations for salary increases which would significantly raise the wages in undervalued sex- or race-segregated positions.

Twenty-two of the states have conducted or are conducting such studies. Sixteen states have undertaken job evaluation studies addressing comparable worth, but have not yet implemented them. They are: Alaska, Connecticut, Illinois, Maine, Maryland, Massachusetts, Montana, New Jersey, New York, North Carolina, Ohio, Oregon, Vermont, West Virginia, Wisconsin and Wyoming. [9]

(5) Implementation of Pay Equity Wage Increases

Six states have taken some action towards implementing their job evaluation studies, in terms of making adjustments in the wages of sex-segregated positions, which were found to be undervalued. Implementation means monies have been appropriated by the legislature or salary increases have actually occurred. States which have begun implementation are Idaho, [10] Iowa,[11] Minnesota[12], New Mexico, [13] South Dakota, and Washington.[14]

(6) Pay Equity Law Suits

Law suits which are based on underpayment for sex- or race-dominated jobs in relation to other positions determined to be of comparable value to the employer have been filed by unions and individuals in at least thirteen states. States in which such litigation has occurred are: California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Michigan, New York, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin. The filing of EEOC charges is not reflected in this list.

(7) Any Legislative Activity Concerning Pay Equity

Thirty-four states have considered legislation addressing pay equity, either by mandating one of the activities discussed here, or establishing a pay equity policy. These states are:

-+*California
- Colorado
+ Connecticut
* Delaware
-* Florida
-+ Hawaii
+ Idaho
-* Illinois
- Indiana
-+ Iowa
+* Maryland
+ Massachusetts
+* Minnesota
-+*Missouri
+ Montana
-+*Nebraska
+ Nevada
-* New Hampshire
+ New Jersey
-+ New Mexico
* New York
+* North Carolina
-* North Dakota
* Ohio
-+*Oregon
-* Pennsylvania
+ Rhode Island
+ South Dakota
* Texas
+ Vermont
+ Virginia
+ Washington
+ West Virginia
+* Wisconsin
+ Wyoming

+ These twenty-four states have passed some type of legislation.

- Legislation failed in these fourteen states.

* Legislation is currently pending in these seventeen states.

(8) No Specific Pay Equity Activity

Five states have taken no specific action towards addressing the issue[15] of pay equity. These states are: Arizona, Arkansas, Delaware, Georgia, and Oklahoma.[16]

CONCLUSION

The wage gap is not new, but what is new is the proliferation of actions aimed at eliminating sex-based and race-based wage discrimination. As our testimony has detailed, pay equity advocates have come a long way in the last six years since the National Committee on Pay Equity was founded. There is still, however, a long way to go. The National Committee on Pay Equity will continue its efforts to reach out to individuals and groups to present the possibilities of pay equity and to provide strategy advice in their own workplaces or areas. We stand ready to assist those members of Congress who are working to implement pay equity to give full expression to the dignity and potential of all our citizens.

1. *Women, Work and Wages: Equal Pay for Jobs of Equal Value.* National Academy Press, Washington, D.C., 1981, pp.40-41.

2. *Employment and Earnings*, Bureau of Labor Statistics, January 1985.

3. *Id*.

4. *The Wage Gap: Myths and Facts.* The National Committee on Pay Equity, 1983, appended to this testimony as Attachment 1. Also see fact sheet on *Women of Color and Pay Equity*, National Committee on Pay Equity, 1984.

5. *Id*.

6. *Id*.

7. *Id*.

8. Tennessee performed a classification and compensation study in 1983, on the basis of which it developed and adopted a point factor system. While the Department of Personnel has stated that this was not a comparable worth study, some sources indicate that it should be considered a pay equity job evaluation study. However, a program evaluation of the Personnel Department, which was released by the Comptroller of the State Treasury, indicates that achieving equal pay for work of comparable value was one of the goals of the study, but that this goal was not adequately fulfilled. Since there is no clear consensus regarding the goals and results of this study, Tennessee is listed here under the preliminary research category.

9. Some states, e.g., Connecticut and Idaho, have been included in this category even though pay equity was not the explicit goal of these studies. They have been included because their studies had some of the characteristics of studies labeled as "pay equity studies." (See concurring positions by Alice Cook, "Summary Results of Comparable Worth Questionnaire- Legislative Evaluation and Accountability Program Committee," May 1984 and GAO Report, "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems," March 1985.)

10. As mentioned in footnote 9, the Idaho study is listed here as a pay equity study even though it did not explicitly seek to achieve comparable worth. As per Alice Cook, *supra*, the study attempts to achieve "internal equity" and did result in a substantial increase in women's salaries in relation to men's (women's salaries increased an average of 16.2%, while men's salaries increased an average of 6.8%, and secretaries' salaries increased an average of 20-30%, Cook, *supra*, p. 84).

11. Iowa is scheduled to begin partial implementation of the salary adjustments recommended by its job evaluation study this year. The State Comptroller has ordered adjustments for non-union employees also.

12. Minnesota has come the furthest towards full implementation. A series of studies and reports conducted between 1975 and 1982 documented significant inequities in wages between male and female employees. Legislation implementing salary increases was passed in 1982 and the process of "equalizing wages" is expected to be complete by 1986.

13. New Mexico is included in the implementation category, even though pay raises were allocated before the completion of a job evaluation study. The legislature appropriated $3.2 million in 1980, following an initial review of the system, which uncovered wage disparities. The money was used to raise the salaries of twenty-three low-paid, female-dominated classes. A point factor system is now being developed to replace the current qualitative system. Full implementation will occur in states over several years, and is expected to cost $20 million.

14. Washington is moving slowly toward implementation of comparable worth. A study begun in 1974, at the former Governor's request, identified wage disparities between female- and male-dominated jobs of comparable value to the state. Funds for pay adjustments were put into the budget by the outgoing Governor Evans, but removed by his successor, Governor Dixie Lee Ray. In 1983, AFSCME filed suit against the state, alleging sex discrimination in compensation. This case is now pending before the Ninth Circuit Court of Appeals. A quantitative job evaluation system has not yet been adopted, but the State has made some initial pay adjustments. A law passed in 1983 appropriated $1.5 million to give nine thousand employees an increase of approximately $1000 per year; the law calls for an implementation plan which is to be completed by 1993.

15. Georgia is included in this category, although it did conduct a job evaluation study in 1975-78, which is considered by some sources to be a comparable worth study. However, the State did not adopt the recommendations of the study, which would have called for an expenditure of $83 million. Instead, it retained the qualitative job evaluation system and appropriated $3 million for across-the-board increases and adjustments to the system. Georgia also had "comparable" language in its employment compensation law, which had not been interpreted as comparable worth legislation. This language was removed from the law in 1984.

16. Oklahoma developed a point factor system, which was adopted in 1981. Although a survey done by the Commonwealth of Virginia cites the Oklahoma system as a job evaluation system based on comparable worth, the Oklahoma State Personnel Department does not consider it to be a comparable worth study, and neither does the GAO report, nor Alice Cook's survey, supra, list it as such. It is unclear from the available information whether or not the study adequately addresses pay equity concerns. Oklahoma is, therefore, listed here as having no specific pay equity activity.

ATTACHMENTS

1. * The Wage Gap: Myths and Facts. The National Committee on Pay Equity, 1983.

2. Two page press release on the National Committee's national poll on public attitudes on pay equity.

3. State Pay Equity Activity Chart, April 1985.

4. Source List for State Activities

*Available from the National Committee on Pay Equity, 1201 16th St., NW Room 422, Washington, DC 20036.

National Committee on Pay Equity
1201 Sixteenth Street, Northwest • Room 422 • Washington, D.C. 20036 • 202/822-7304

EXECUTIVE DIRECTOR
Claudia E. Wayne
CHAIR
Nancy Reder
League of Women Voters
TREASURER
Carole Wilson
International Union of Electrical, Radio and Machine Workers
BOARD OF DIRECTORS
American Civil Liberties Union
American Federation of State, County and Municipal Employees
American Nurses' Association
Business and Professional Women's Foundation
Center for Women in Government
Coalition of Labor Union Women
Communications Workers of America
Industrial Union Department, AFL-CIO
Mexican American Women's National Association
National Education Association
National Organization for Women
National Women's Political Caucus
9to5: National Association of Working Women
Organization of Pan Asian American Women
Service Employees International Union
United Methodist Church
Women's Legal Defense Fund

FOR RELEASE: February 12, 1985

For more information, contact:

Claudia Wayne	202/822-7304
Barbara Stein	202/822-7715
Sandra Porter	202/872-1782

NATIONAL SURVEY SHOWS AMERICANS BELIEVE WOMEN ARE PAID UNFAIRLY

A national survey released today shows that sixty-nine percent of U. S. employees believe women are not paid as fairly as men. To solve this problem, four out of five working Americans surveyed support the concept of pay equity.

Claudia Wayne, executive director of the National Committee on Pay Equity, said, "The poll shows that women and men care very much about fairness. Their voices can no longer be ignored."

The survey, commissioned by the National Committee on Pay Equity, was conducted by Marttila & Kiley, a Boston polling firm. Over one thousand working Americans, including equal numbers of men and women, were selected at random and contacted by telephone in November, 1984. The Levi Strauss Foundation provided partial funding for the poll.

The survey was designed to ascertain working people's attitudes toward the wage gap between men and women. Among its conclusions:

- In unprompted responses, both men and women most frequently point to discrimination as the primary cause of the wage gap.

(MORE)

- Eighty-three percent of those polled said they believed the wage gap (defined as women earning roughly sixty cents for every dollar men earn) was a serious problem that we should correct.
- A majority of those surveyed believe the most important goal of the pay equity struggle is the elimination of a person's sex as a factor in determining wages.
- A majority of those surveyed believe that occupations dominated by women--nursing, teaching, and clerical work--are underpaid. In addition, sixty-one percent of those surveyed said they believed that if most nurses and secretaries were men, "the jobs would pay a lot better than they do."

According to Wayne, "Grassroots support of pay equity is strong and growing. Pay equity is a woman's issue, an economic issue, a work issue, and it is a discrimination issue."

The National Committee on Pay Equity, a coalition of women's and civil rights organizations, state and local governments, and working women and men, was formed in 1979 to work for the elimination of sex-and race-based wage discrimination.

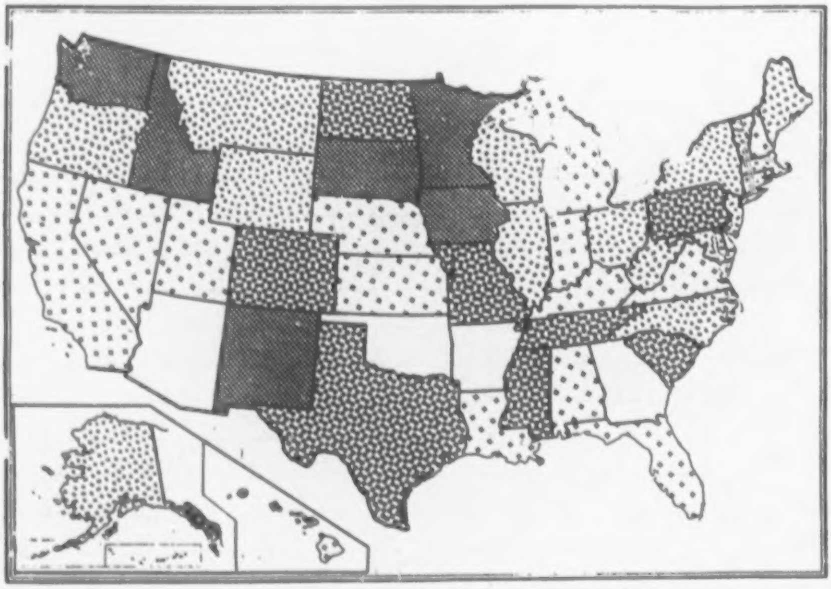
#

SOURCES

1. Congressional Research Service, "Summary of Pay Equity/Comparable Worth Activities by State Governments", March 11, 1985.
2. GAO Report of the Comptroller General of the United States on "Options for Conducting a Pay Equity Study of Federal Pay and Comparable Worth", 1985.
3. Report of the Secretaries of Administration and Finance of the Commonwealth of Virginia on the "Status and Implications of Comparable Worth," 1984.
4. Alice Cook, "Summary Results of Comparable Worth Questionnaire - Legislative Evaluation and Accountability Program Committee," May 1984
5. "Who's Working for Working Women. A Summary of State and Local Pay Equity Initiatives", Comparable Worth Project, the National Committee on Pay Equity, and the National Women's Political Caucus, 1984

A

National Committee on Pay Equity



Key - preliminary research/

☐ = no specific action

▨ = data collection

▨ = task force or commission

☐ = job evaluation study addressing pay equity

■ = implementation

Note: In contrast to the chart, which indicates the various types of pay equity activity which have occurred in each state, the map indicates each state's most progressive stage, with implementation being the most inclusive.

Description

search/Data Collection - activities preliminary to a job luation study, e.g. monitoring pay equity activities in other rs, holding public hearings on pay equity, studying the issue in general.

Task Force or Commission - pay equity task force or commission has been set up by any body of state government to conduct data collection, preliminary research or a job evaluation.

Pay Equity Policy - policy establishing pay equity as a goal in the public or private sector. May be established by legislation or executive order. (L = Legislation)

Job Evaluation Study Addressing Pay Equity - full or pilot study of the state civil service classification and compensation system, which addresses pay equity concerns within a single employer context. In determining whether a job evaluation study addresses these concerns, the following criteria were considered: (1) year study completed; 2) use of a point factor system in order to evaluate dissimilar jobs in relation to a set of common factors; 3) comparison of salaries in female- and male-dominated or racially-dominated categories; 4) inclusion of all positions within a single classification system to achieve "internal equity"; 5) recommendations for salary increases which significantly correct undervaluation of female- or racially-dominated job categories. (P = Pilot)

Implementation - pay increases have been made or appropriated for employees, which address pay inequities in female- or racially-dominated job categories.

Law Suits - public or private sector litigation has been brought in the state, alleging sex- or race-based wage discrimination involving dissimilar job categories.

Legislative Activity - legislation which pertains to pay equity has considered, e.g., bills to establish a pay equity policy, initiate preliminary data collection, job evaluation study or other activity. (Pe = Pending, Pa = Passed, F = Failed)

FOR MORE INFORMATION CONTACT THE NATIONAL COMMITTEE ON PAY EQUITY, 1201 16th St., N.W. Room 422, Washington, D.C. 20036 202/822-7277

Cost of State Pay Equity Activities: $2.00 prepaid.

B

State Pay Equity Activities

May 1985

	Research/Data Collection	Task Force or Commission	Pay Equity Policy	Job Eval. Study	Implementation	Law Suits	Leg. # Activity		
							Pa	Pe	F
Alabama	X	X							
Alaska		X	L	X					
Arizona									
Arkansas									
California	X	X	L			X	X	X	X
Colorado	X					X			X
Connecticut		X		X		X	X		
Delaware								X	
Florida	X	X						X	X
Georgia									
Hawaii	X	X	L			X	X		X
Idaho			L	X	X		X		
Illinois		X		P		X		X	X
Indiana	X	X							X
Iowa	X	X	L	X	X	X	X		X
Kansas	X	X							
Kentucky	X	X							
Louisiana	X	X							
Maine	X	X		X					
Maryland	X	X	L	X			X	X	
Massachusetts	X	X		X			X		
Michigan	X	X				X			
Minnesota	X	X	L	X	X		X	X	
Mississippi	X								
Missouri	X						X	X	X
Montana	X	X	L	X			X		
Nebraska	X	X					X	X	X

C

	Research/Data Collection	Task Force or Commission	Pay Equity Policy	Job Eval. Study	Implementation	Law Suits	Leg. / Activity		
							Pa	Pe	F
Nevada	X	X					X		
New Hampshire	X	X						X	X
New Jersey	X	X	L	X			X		
New Mexico	X	X		X	X		X		X
New York	X	X		X		X		X	
North Carolina	X	X		X			X	X	
North Dakota	X							X	X
Ohio	X	X		P				X	
Oklahoma									
Oregon	X	X		X		X	X	X	X
Pennsylvania	X					X		X	X
Rhode Island	X	X				X	X		
South Carolina	X								
South Dakota				X	X		X		
Tennessee	X								
Texas	X							X	
Utah	X	X							
Vermont	X	X		X			X		
Virginia	X	X					X		
Washington	X	X	L	X	X	X	X		
West Virginia	X	X		X			X		
Wisconsin	X	X		X		X	X	X	
Wyoming				X			X		
Totals	39	34	10	22	6	13	24	17	14

This chart prepared by Mary Ann Mausser, Antioch Law School and June K. Inuzuka, 1985-86 Revson Fellow.

D

SOURCES

1. Congressional Research Service, "Summary of Pay Equity/Comparable Worth Activities by State Governments", March 11, 1985.
2. GAO Report of the Comptroller General of the United States on "Options for Conducting a Pay Equity Study of Federal Pay and Comparable Worth", 1985.
3. Report of the Secretaries of Administration and Finance of the Commonwealth of Virginia on the "Status and Implications of Comparable Worth," 1984.
4. Alice Cook, "Summary Results of Comparable Worth Questionnaire - Legislative Evaluation and Accountability Program Committee," May 1984
5. "Who's Working for Working Women. A Summary of State and Local Pay Equity Initiatives", Comparable Worth Project, the National Committee on Pay Equity, and the National Women's Political Caucus, 1984

Summary of State Pay Equity Activity

The information in this summary is based on a compilation of several recent surveys on state activity (See Source List). It is important to note that each survey used different criteria and sometimes contained limited or contradictory information. Supplementary research was conducted where possible. It is expected that this data will change as new information becomes available to us.

Currently all but *five* states have taken some action to address the issue of pay equity. States which have not taken any specific action are Arizona, Arkansas, Delaware, Georgia, and Oklahoma.

Eight states are engaged in preliminary research/data collection on pay equity independent of a formal task force or commission. These activities include monitoring activities in other states, public hearings, and formal reports on the issue in general. States engaged in activities preliminary to a formal job evaluation study are: Colorado, Mississippi, Missouri, North Dakota, Pennsylvania, South Carolina, Tennessee, and Texas.

Fifteen states have established task forces or commissisions to address the issue, but have not yet undertaken a formal job evaluation study: Alabama, California, Florida, Hawaii, Indiana, Kansas, Kentucky, Lousiana, Michigan, Nebraska, Nevada, New Hampshire, Rhode Island, Utah, and Virginia.

In all *sixteen* states have undertaken job evaluation studies which address pay equity concerns: Alaska, Connecticut, Illinois, Maine, Maryland, Massachusetts, Montana, New Jersey, New York, North Carolina, Ohio, Oregon, Vermont, West Virginia, Wisconsin, and Wyoming.

Formal job evaluation studies or pilot studies actually study the jobs and wages themselves as opposed to preliminary pay equity studies which usually explore the basis, feasibility, and options for conducting such a study. In determining whether a job evaluation study met pay equity concerns, the use of a quantitative system which creates internal equity and eliminates sex and/or race bias in setting wages was considered controlling. For this reason, such states as Connecticut and Idaho have been included even though they deny that pay equity was a specific goal of their studies.

Six states, Idaho, Iowa, Minnesota, New Mexico, South Dakota, and Washington, have appropriated or set aside funds to actually implement pay equity salary adjustments. Minnesota, one of the leaders in implementing pay equity, is phasing in implementation over a 4 year period. Having completed the first two years of implementation, appropriations totaling $13 million are pending in the legislature for the third and fourth years. New Mexico is somewhat unique in that pay equity salary adjustments were appropriated in 1983 prior to the completion of a job evaluation study. In addition, Idaho is listed as implementing even though it denies having conducted a "pay equity/comparable worth" study. In 1977 the legislature implemented the results of a point factor system designed by Hay and Associates which attempts to create a "high degree of internal consistency" in wages. Salary adjustments are slowly being phased in and women's salaries have increased an average of 20-30%. More recently, in February of 1985, the South Dakota legislature set aside 4 million for pay equity increases to implement a Hay pay equity study which had been undertaken the previous year.

National Committee On Pay Equity

Pay equity advocates have formed the National Committee on Pay Equity—the only national coalition working exclusively to achieve equal pay for work of comparable value. The Committtee has over 280 organizational and individual members, including international labor unions and major women's and civil rights groups as well as educational and legal associations.

The goals of the National Committee include:

- providing leadership, coordination and strategy directions to members and other pay equity advocates.
- providing assistance and information to the growing number of public officials, labor unions, women's groups and other organizations and individuals pursuing pay equity.
- stimulating new pay equity activities.
- bringing national and local attention to this issue.

For membership and other information, contact: The National Committee on Pay Equity, 1201 16th Street, N.W., Suite 422, Washington, DC 20036; 202/822-7304.

Senator STEVENS. The next witness is Phyllis Schlafly of Eagle Forum. Good morning.

TESTIMONY OF PHYLLIS SCHLAFLY, PRESIDENT, EAGLE FORUM

Mrs. SCHLAFLY. Thank you, Mr. Chairman. My name is Phyllis Schlafly, president of Eagle Forum, a national pro-family organization. I am a lawyer, writer, and homemaker.

We oppose the concept called comparable worth for two principal reasons: (A), it is unfair to men; and (B), it is unfair to women. Comparable worth is unfair because the whole concept depends on rigging the results of studies and evaluations by putting your own friends in charge of predetermining the results.

S. 519 is a good example of this. It would predetermine the results of the proposed study by loading the proposed Commission on Compensation Equity with comparable worth advocates. This rigging of the commission membership is so blatant and its bias so outrageous that one wonders how it it could be supported by anyone with a straight face.

One-third of the commission is specified to come from labor organizations representing substantial numbers of women. This is a device to load the commission with unions which have already endorsed comparable worth and which have a self-interest in restructuring the wage system to advantage women at the expense of men. No doubt one of the unions required to be included would be AFSCME, the union which invented the concept of comparable worth as a litigating tool and was responsible for the famous $1 billion lawsuit against the State of Washington.

Why does S. 519 not specify that one-third of commission members come from labor organizations representing substantial numbers of men? Because the bill is designed to legalize and institutionalize unfairness, that's why. Instead of being cited as the Federal employee antisex discrimination in compensation act, it should be called the Federal Pro-Sex Discrimination Act.

The 1985 General Accounting Office report on options for conducting a study of Federal pay systems admits that there are no objective criteria for determining job worth. So any alleged determination of job worth must be subjective and wholly reflective of the biases of those making the evaluation.

The GAO report reveals its own subjective bias on page 1, wherein it uses figures allegedly showing that the average earnings for year-round, full-time female workers are only 59 percent of men and then asserting that it is not clear why this wage gap exists. This phony statistic insults the intelligence of the reader. Just to mention one reason for the differential, the average full-time female worker works a 36-hour week, whereas the average full-time male worker works a 44-hour week. Unless you believe that we should all be paid equally regardless of how many hours we work, this use of the words "wage gap" is dishonest and misleading.

I support the excellent criticisms of the GAO report given by the representative of the Society for Personnel Administration and also witness Sharon Spigelmyer yesterday. In addition, other biases in the GAO report are shown by the questions submitted to the GAO by Congressman Dannemeyer and the GAO answers which I will append to my testimony.[1]

Let's be blunt about the purpose of the comparable worth bills. They are an attempt to abandon the present system under which wages are set by millions of freely made individual decisions between employer and employee, and instead, substitute a system by which the wages are set by compensation commissars who are given the power of law to enforce their own subjective biases on everyone else.

Those who advocate comparable worth have a very particular bias. They want to freeze the wages of blue-collar men while forcing employers to raise the wages of some white- and pink-collar women above marketplace rates. According to the comparable worth rationale, blue-collar men are overpaid and their wages should be frozen until white- and pink-collar women have their wages artificially raised to the same level. The proof that this is really what the comparable worth debate is all about is in both their rhetoric and their statistics.

I've been debating feminists and listening to their arguments for more than a decade. It is impossible to overlook their rhetoric of envy. I have heard feminist leaders say hundreds of times, "It isn't fair that the man with a high school education earns more money than the woman who graduated from college or nursing or secretarial school."

That complaint means that the feminists believe that truck drivers, electricians, plumbers, mechanics, highway workers, maintenancemen, policemen, and firemen earn more money than the feminists think they are worth. And how do the feminists judge worth? By paper credentials instead of by apprenticeship and hard work and by devaluing physical risk and unpleasant working conditions.

So the feminists devised the slogan "comparable worth" to make the blue-collar man feel guilty for earning more money than women with paper credentials and to trick him into accepting a Government-enforced wage freeze while all available funds are used to raise the wages of some women.

Statistical proof that the aim of comparable worth is to reduce the relative earning power of the blue-collar men is abundantly available in the job evaluations commissioned and approved by the comparable worth advocates. You can prove this to yourself by making a job-by-job examination of any study or evaluation made with the approval of comparable worth advocates. It is always an elaborate scheme to devalue the blue-collar man.

For example, look at the Willis evaluation used in the famous case called *AFSCME* v. *State of Washington*. Willis determined that electricians and truck drivers were overvalued by the States and that their worth was really far less than the worth of a registered nurse. More precisely, Willis produced an evaluation chart on which the registered nurse was worth 573 points, whereas the electrician was worth only 193 points, one-third of the nurse, while the truck driver was worth only 97 points, one-sixth of the nurse.

---

[1] See p. 460.

The Federal district court accepted the Willis evaluation as though it were some kind of divine law, refusing to listen to the Richard Jeanneret PAQ evaluation, which produced very different evaluations of worth. The Federal district court decision, unless it is overturned on appeal, is a device to freeze the wages of electricians and truck drivers until the State finds a way to pay the registered nurse three times and six times as much, respectively.

This is exactly what happened in the recent Los Angeles comparable worth settlement. The men's wages were simply frozen, while all the raises were given only to women.

How do jobs get certain points? The evaluator invents them, that's how. The comparable worth advocates hire an evaluator under a contract in which he is obligated, (A), to ignore all marketplace factors; and (B), to produce a pointed system to prove discrimination against women.

One of the techniques by which this is done is the devaluing of the physical and working condition factors so important in blue-collar jobs. This devaluation of blue-collar jobs is always an inevitable result of integrating white-collar and blue-collar jobs in the same evaluation.

If the Federal white-collar and blue-collar pay classifications were integrated, the blue-collar employees would be drastically devalued because the Federal white collar pay system accords less than 5 percent of the possible points to physical demands and working environment combined.

The comparable worth advocates and evaluators join in a chorus to claim it is so scientific because worth is based on education, training, skills, experience, effort, responsibility, and working conditions. The fact is that once you throw out marketplace factors, the evaluation is completely subjective and just reflects the bias of the evaluators.

The Willis evaluation determined that the mental demands on a nurse are worth 122 points, whereas the mental demands on an electrician are worth only 30 points and the mental demands on a truck driver are worth only 10 points. That is the view of the profeminist evaluator. For a contrary view, ask the electrician and the truck driver about the worth of their mental demands.

Comparable worth evaluations must be recognized as a racket to put people with your own biases on the evaluation team or to saddle the evaluator with a contract that binds him to produce the results you predetermine.

Not only is the comparable worth concept wholly subjective, but it is also wholly arbitrary. It proposes to raise only some women's pay at the expense of men and other women. This arbitrariness is shown by the fact that only those jobs where 70 percent or more of the employees are female would be eligible for comparable worth raises. This was made clear in the devastating analysis of the Wisconsin Governor's evaluation made by the Wisconsin Association of Manufacturers and Commerce.

The Wisconsin Governor's task force study lists the job called institution aide as having a comparable worth gap of $5,132. But the employees in this position would not get a C–W raise because only 67 percent of the 116 employees are women, and institution aide cannot, therefore, be designated as a woman's job unless it meets the 70 percent test.

Now suppose that the State needs two more institution aides. If it hires two women, it will cross the 70-percent threshold. The State will then have to give all institution aides a raise, and it will therefore cost the State $595,000 to hire two women. The personnel manager can easily manipulate the system, depending on whether he is pro-feminist or pro-budget cutting.

Or consider the position called nursing assistant 3. Because it has 70 percent women, all 104 employees would be scheduled to get a raise of $3,626 to close the so-called C-W gap. If the personnel manager simply hires one male or fires two females, he can avoid C-W raises for all and Save $377,136 in his budget.

The entire concept of comparable worth hangs on sexist comparisons between male-dominated jobs and female-dominated jobs. S. 519 makes this clear by ordering the commission commissars to compare positions held predominantly by female employees with positions held predominantly by male employees. What does predominantly mean? Seventy percent, 80 percent, 51 percent? The commission will decide. It is impossible to escape the arbitrary nature of this decision and the way it impacts on workers.

Why should we pay any attention at all to whether the job is held by a man or a woman? Why can't we be sex neutral and look at the work done instead of at who does it? If pay scales are to be determined by who does the job instead of by what work is done, it would be much more equitable to look at whether the worker is or is not supporting a family than to look at whether he or she is a man or a woman.

In addition, comparable worth is unfair to women in that its effect is to squeeze lower-skilled women out of the job market all together. The respected economist June O'Neill has written lengthy treatises to show how and why this is the result. But that's not the only way comparable worth is unfair to women. It also hurts the women who have moved into nontraditional jobs.

When the Illinois nurses sued the State of Illinois, as soon as the ink was dry on the study that was ordered by the legislature, claiming they should be paid equally with the mostly male electricians and stationary engineers, 11 female State employees in nontraditional jobs tried to enter the lawsuit as intervenors. They all work in a job classification called correctional officer, which is a euphemism for prison guard. The evaluation said that these male-dominated jobs are not worth as much as they are now being paid. Illinois was paying prison guards $145 a month more than entry level secretaries, but the comparable worth evaluation gave secretaries 12 more comparable worth points than prison guards.

The women prison guards claimed that the present system of compensation properly rewards them for their special skills, performance of particularly difficult, dangerous, and unpleasant work, their willingness to challenge stereotypes and perform nontraditional jobs and the nondiscriminatory market forces of supply and demand. Put another way, the State has found that it must pay more to hire prison guards than office personnel because of the risk on the job and the unpleasant work.

Ask yourself the question, how many women would be willing to be a prison guard if the pay were the same or less than the pay of a secretary?

Women are already flooding into the so-called traditional women's jobs by the millions. If the pay is raised for these jobs, even more women will seek those jobs and abandon plans to go into nontraditional lines of work. At the same time, business will eliminate jobs in order to cut costs, and low-skilled women will be laid-off. That's why Clarence Pendleton, Chairman of the U.S. Commission on Civil Rights, said that comparable worth for women is as self-defeating as saying 20 years ago that the way to improve the economic lot of blacks would be to raise the pay of red caps.

We are all aware that comparable worth has, in recent months, become a controversial issue on the media. The pro-feminist bias of the media has meant a pro-comparable worth bias on most television programs.

So it is with particular interest that I discovered a confidential and copyrighted memorandum on comparable worth distributed by the legal department of the National Association of Broadcasters for the benefit of its TV and radio station members.

This memorandum warns stations to "think very carefully before undertaking any formal study of the relationship between the value or difficulty of the positions held by their employees and the salaries they receive. Be sure to consult your lawyer," the memorandum says. "If an employer's only motive is to protect himself against the hazards of new theories of wage discrimination like comparable worth, it is fair to say that a job evaluation study is far more likely to be a burden than a boon."

That's good advice, not only for television and radio broadcasters, but for any employer, including the Federal Government and State governments. Any public or private employer who commissions a study or job evaluation based on alleged worth of jobs is inviting not only a lawsuit, but also endless charges of unfairness to men and women. America has the highest standard of living and the highest wages in the history of the world precisely because wages are set by the marketplace in a free economy.

We urge the Senate to reject all notions that an elite group of commissioners can decide what people are worth. No one will accept their decisions as fair.

There are, indeed, many studies being undertaken in the States at the present time, but the momentum in the States is all going against comparable worth. It is losing in States like Illinois and Texas; it is being rolled back in States like North Carolina. It is losing in the courts, and Mr. Chairman, we hope it will lose in Congress.

Senator **Stevens**. Thank you for appearing. Could you give us a copy of that confidential memorandum, or is that something you don't have?

Mrs. **Schlafly**. Yes, sir. I have it right here.[1]

---

[1] See p. 463.

Senator **Stevens**. We would be pleased to have that. I think that would be interesting to have for our record. I do appreciate your testimony and I appreciate your waiting for time to testify.

Senator Evans.

Senator **Evans** [presiding]. Thank you, Mr. Chairman.

I have a couple of questions.

Mrs. **Schlafly**. Excuse me, Senator.

Senator **Evans**. I just have a few questions. I may have one or two written questions. I don't want to delay the remaining witnesses who must testify. If you would be kind enough to answer those, it would be helpful for us.

Do I understand correctly that you believe that job evaluation schemes are essentially subjective and are inappropriate versus the marketplace in setting wages?

Mrs. **Schlafly**. If the job evaluation is based on an alleged intrinsic worth of the job and on comparing dissimilar jobs, which are the two essential features of comparable worth, then yes, I believe that such a system is unfair and subjective.

Senator **Evans**. From your testimony, it seemed to me that you were suggesting much more broadly that the job evaluation was subjective under the present system where wages are set by millions of freely made individual decisions between employer and employee. I guess we have it one way or the other?

Mrs. **Schlafly**. Some employees do have job evaluation schemes, which is basically an orderly method of structuring their pay system. But they are all keyed to the marketplace.

An employer does not ask: Now, what do I really think this job is worth?

He says: How much do I have to pay to hire an engineer or a stenographer or whatever. The job evaluation schemes presently in use by some Fortune 500 companies and by the Federal Government are ultimately keyed to the marketplace.

What we think is subjective, arbitrary and unfair is the notion that there is intrinsic worth of a job which somebody can determine and force on the rest of us.

Senator **Evans**. We are talking about two different things, the marketplace on the one hand and appropriate internal alignments which any organization wants to make on the other hand, internal alignments which I would hope have, as the goal, to create not only employee satisfaction, but higher productivity and to make the enterprise work better. It seems to me whether in a public or private enterprise, those are somewhat essential goals that we have got to keep in mind.

On the internal alignment side, are you aware that many of those same Fortune 500 companies use essentially the kind of evaluation system that has been talked about here? In fact, that is how most of these companies make most of their money, is in private corporations.

Mrs. **Schlafly**. Senator, I really don't think that is true. Many of these consultants have made lots of money in job evaluations, such as Hay Associates, and they are very blunt in offering their services to anyone who comes.

They say straight out, "If you want a management-type evaluation keyed to the marketplace, we will give you that, and if you want a pro-feminist evaluation, we will give you that."

Senator **Evans**. I have never heard that.

Mrs. **Schlafly**. They specifically made that type of a presentation when they offered their services to the San Jose City Council, and it is very customary and general that they will offer their services to a prospective client, saying, "We will produce the results in accord with whatever you want."

Senator **Evans**. I suppose that may be true of all consultants all over the world. I have never seen a consultant yet produce a document for a client who didn't support that client's view.

But I guess we are about at the front edge of things. At least we got into it earlier and got into it by accident. We are not searching for anything in particular other than in the State of Washington, a better way of trying to align jobs among the executives of the State, who I thought at the time I came into office were underpaid, and yet underpaid in an inconsistent way. It was when I asked the question of several of the major corporate executives of our own State, they suggested the companies and the methods which they used for precisely those kinds of internal job alignments.

It was only by accident and not search that we came across some of the other elements.

Mrs. **Schlafly**. Senator, I am sure that is true, but when you find that the feminists load up the commission, then the consultant realizes which results he is supposed to produce, and when he produces a result as he did in the *State of Washington* case that the nurses were worth 6 times what the truck driver is worth, I think it is pretty clear that they produced the results that the feminists want.

Senator **Evans**. I can guarantee you, in fact, that was so long ago, I don't even think we knew what the word feminist meant. We are talking 20 years ago. At that time, believe me, there was no search for anything, and somehow, you have gotten ahold of some wrong figures, because never, in any of that documentation, was there any suggestion that a registered nurse ought to be paid 6 times as much as a truck driver or 3 times as much as an electrician.

Mrs. **Schlafly**. That is what the Willis point evaluation concluded that was upheld in Judge Tanner's decision.

Senator **Evans**. Not so.

Mrs. **Schlafly**. And Judge Tanner's decision says to the State of Washington, in effect, "When you ordered the study you knew you were guilty, so we are not going to look behind what the evaluators decided."

Senator **Evans**. I thoroughly disagree with Judge Tanner's decision because job evaluation is nothing more than setting internal alignments. The amount you pay is a separate decision, and I agree with you that that has some relationship to the marketplace.

Judge Tanner substituted his own view for that, both the State and the evaluator, and I think that in that respect, it was an inappropriate decision, and that part of it may well be overturned.

I am not quite sure what your definition of a commissar is. Would you care to elaborate?

Mrs. SCHLAFLY. Yes. Somebody who makes an arbitrary decision in line with his own political biases. That is exactly what I think the commission on pay equity would be.

Senator EVANS. The commission suggested in S. 519 essentially parallels the recommendations of the GAO. You are aware, of course that two of the nine, would be appointed by the President, and I am sure you wouldn't suggest that President Reagan would appoint commissars?

Mrs. SCHLAFLY. No, but the bill is written so that you will have a majority of 5 out of nine who are pro-comparable worth, and the commission will be set up that way.

Senator EVANS. I just want to probe a little more to find out where the commissars are going to come from. The majority leader of the Senate appoints one. Is he going to appoint a commissar?

Mrs. SCHLAFLY. The commission calls for nine members.

Senator EVANS. I know.

Mrs. SCHLAFLY. Three of them are to be selected from unions that have a substantial number of women.

Senator EVANS. Three out of nine has never been a majority.

Mrs. SCHLAFLY. Yes, but you add to that the political appointments by the minority leader in the Senate and the Speaker of the House, and you have got a majority of five out of nine.

Senator EVANS. You are suggesting they would appoint commissars rather than commissioners?

Mrs. SCHLAFLY. The Democratic National Platform endorsed comparable worth, and I certainly am suggesting they would appoint members to that commission who are procomparable worth. I think the bill institutionalizes a 5 to 4 majority of people who have already predetermined that we should institute comparable worth based on alleged sex discrimination.

Senator EVANS. Do you believe that currently our wage system is one which you described as a present system under which wages are set by millions of freely made individual decisions between employer and employee? Is that an accurate description of the current system?

Mrs. SCHLAFLY. Yes. I am including collective bargaining in that.

Senator EVANS. Is that a freely made decision between employer and employee?

Mrs. SCHLAFLY. Sure.

Senator EVANS. A lot of people who are mandatorily required to join unions and subject themselves to the wages established by the unions don't think so. I am surprised that you think so.

Mrs. SCHLAFLY. I am not raising the prounion/antiunion question here.

I support individual bargaining and collective bargaining, but I do not support——

Senator EVANS. You are not much of a fan of unions, are you?

Mrs. SCHLAFLY. Yes, I am a fan of unions.

Senator EVANS. Mandatory membership?

Mrs. SCHLAFLY. Not mandatory membership, no.

Senator EVANS. There is a good good deal of mandatory membership. To that degree, I would think your saying that protects individual, freely made decisions in——

Mrs. **Schlafly**. Well, as long as the employees have freely joined the union and established a collective-bargaining agent, I don't have any problem with that.

What I have a problem with is an institutionalized system wherein somebody is going to look at a crystal ball and decide what somebody is worth. If you read the rhetoric and the goals of the feminists, you know that they have targeted the blue-collar worker as that segment of our society which is overpaid, and they are out to devalue them, to freeze their wages while they bring up the pay of the so-called traditional women's jobs.

Senator **Evans**. I would have to let them, whoever they are, speak for themselves on that.

Do you think that civil service wage setting is a freely, individualized decisionmaking process?

Mrs. **Schlafly**. Nobody has to go to work for the Government if you don't want to, and I understand that there are plenty of applicants for Government jobs. So there must be a lot of people who want to work for the Government.

Senator **Evans**. That doesn't answer the question. You talk about the current system under which wages are set by millions of freely made, individual decisions. That is hardly a freely made, individual decision if the wages are set by whatever State commissars there are on civil service, and then degraded by legislatures who don't even pay attention to comparable wages and decide what that is.

Mrs. **Schlafly**. But that is all keyed to the marketplace. If the Government only offered $5,000 a year for secretaries, they wouldn't have any secretaries. If they offered $25,000 a year for secretaries, they would have such a clamor that you would hardly be able to sort through the applications.

So ultimately, it is keyed to the marketplace. The average employer doesn't say, "Do I think my secretary is worth more or less than the electricians who handle the equipment?"

He says, "How much do I have to pay to hire somebody with this skill." And that is the way it should be.

Senator **Evans**. Are you aware of the experience of Colorado Springs and the testimony of Mayor Isaac before the committee?

Mrs. **Schlafly**. I didn't read it carefully, but didn't he say under questioning that if you order a study you better be prepared to implement the results?

Senator **Evans**. Of course.

Mrs. **Schlafly**. What?

Senator **Evans**. Of course.

Mrs. **Schlafly**. Well, that's the problem with ordering a study. A study sounds so innocuous, but you are locked into it if you make it.

Senator **Evans**. Not innocuous at all. I think it ought to be done very carefully. Again, the implementation of any study of this kind, of any kind of wage evaluation, whether it is comparable worth, whether it is done by current civil service measurements, really sets internal alignments, and beyond that, you have to operate within the marketplace.

I thoroughly agree with that. I think we should distinguish between the two. You cannot go way beyond the marketplace in any of your wage setting, but I think that any organization, for its own benefit, for its benefit in terms of employee morale, in terms of employee productivity, in terms of the overall health of the organization, ought to be very careful about how it sets its own internal alignments.

That essentially, was the story of Mayor Isaac. What they got out of their system was improved employee morale, greater productivity, which he felt at least equaled the very small extra cost of wage setting.

Mrs. **Schlafly**. Who knows exactly what points they allocated to different people? Minnesota is sometimes cited as a great example of comparable worth, but when they carried the implementation to the local level, the policemen and the firefighters are now in court trying to get out of the system because they finally realized that they are the ones who were targeted for wage freezes, and they are going to lose out under it.

Senator **Evans**. I think we are in a period where there are a good many experiences, both with this relatively new system and other kinds of systems, where there will be either abuses or inaccuracies or inappropriate ways to apply it. I think that is what we have got to be very careful of.

Mr. Chairman, I have got just one other question.

You talk on pages 7 and 8 of your testimony that business will eliminate jobs in order to cut costs and low-skilled women will be laid off.

I presume that you are in favor of the concept of equal pay for equal work?

Mrs. **Schlafly**. Absolutely.

Senator **Evans**. Are you aware that 20 years ago, when that was being debated in Congress, the very same arguments were used by the National Association of Manufacturers, the U.S. Chamber of Commerce and others that if equal pay for equal work were to be implemented, women would be laid off, costs would go up, low-skilled women wouldn't be able to find a job; almost identical arguments were used at that time on that concept?

Mrs. **Schlafly**. I don't really think there was much debate about that. "Sex" was slipped into the Civil Rights Act in 1964 with very little debate.

Incidentally, they rejected the notion of comparable worth at that time, and maybe some people made that argument. I certainly didn't.

I think we were them shifting in our society in a social consensus of what was the just way to pay people. Thirty to forty years ago, it was considered to be social justice to give the economic advantage to the father who was supporting his family. There were other compensations for women in other areas such as the preferential 3-year advantage they received in Social Security. In the 1960's, we had a shift in consciousness of what our country believed was social justice, and now I think that this country has very well accepted the notion of equal pay for equal work, regardless of who it is doing the work.

The problem with comparable worth is it is going back to the medieval notion of what is a just wage and trying to pay people based on some mystical notion of intrinsic worth, and then considering who is doing the work instead of what work is being done.

I think that this is not going to be accepted by the American people. I think you might even compare it to something like the Susan B. Anthony dollar. Congress thought that was a nifty idea because the feminists wanted it. They put it out in the economy, and the economy absolutely rejected it.

I think we are rejecting comparable worth all across the country today, in State after State, in court after court, and the last gasp is here in Congress.

Senator EVANS. I would suggest that in 1963 in a separate act, not in the 1964 Civil Rights Act, the concept of equal pay for equal work was debated, and I don't know how extensive the debate was, but I sure know that I have had a devil of a time reading through all of the testimony in the committee reports and the floor debate—all the alleged experts. Universally, at that time, those representing the business interests of this country opposed the whole concept in almost identical language to testimony we have heard before from business organizations on this concept.

I would agree with you that we had a different idea of social justice then, and maybe after a generation another review is worthwhile in the making. I would not suggest that it ought to be made by commissars, but ultimately by Congress. That is what we are going to do. Congress itself is going to ultimately make the decisions. I think that is where the appropriate responsibility ought to lie.

Mrs. SCHLAFLY. Yes, but I hope Congress doesn't delegate the wage-setting power to these so-called compensation people, who can make subjective decisions about worth, and then compare dissimilar jobs and come up with an arbitrary result and then, having made the study, some court comes along and hold our feet to the fire and says we have to implement it, whether we accept the bias of the evaluator or not.

Senator EVANS. Thank you, Mr. Chairman.

Senator STEVENS. Thank you.

Thank you very much, Mrs. Schlafly. I appreciate you taking time to testify before the subcommittee.

Mrs. SCHLAFLY. Thank you, Senator.

Thank you, Mr. Chairman.

[Mrs. Schlafly's prepared statement, with attachments, follows:]

STATEMENT BY PHYLLIS SCHLAFLY

TO THE CIVIL SERVICE, POST OFFICE, & GENERAL SERVICES SUBCOMMITTEE

OF THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE

JULY 25, 1985

My name is Phyllis Schlafly, president of Eagle Forum, a national pro-family organization. I am a lawyer, writer, and homemaker.

We oppose the concept called "Comparable Worth" for two principal reasons: (a) it's unfair to men and (b) it's unfair to women. Comparable Worth is unfair because the whole concept depends on rigging the results of studies and evaluations by putting your own friends in charge of predetermining the results.

S. 519 is a good example of this. It would predetermine the results of the proposed study by loading the proposed "Commission on Compensation Equity" with Comparable Worth advocates. This rigging of the Commission membership is so blatant and its bias so outrageous that one wonders how it could be supported by anyone with a straight face.

One-third of the Commission is specified to come from "labor organizations representing substantial numbers of women." This is a device to load the Commission with unions which have already endorsed Comparable Worth and which have a self-interest in restructuring the wage system to advantage women at the expense of men. No doubt one of the unions required to be included would be AFSCME, the union which invented the concept of "Comparable Worth" as a litigating tool and was responsible for the famous $1 billion lawsuit against the State of Washington.

Why does S. 519 not specify that one-third of the Commission members come from labor organizations representing substantial numbers of men? Because the bill is designed to legalize and institutionalize

---

Phyllis Schlafly, 68 Fairmount, Alton, IL 62002; 618/462-5415, 202/544-0353

unfairness, that's why. Instead of being cited as the "Federal Employee Anti-Sex-Discrimination in Compensation Act," it should be called the Federal Pro-Sex-Discrimination Act.

The 1985 General Accounting Office report on "Options for Conducting a Study of Federal Pay Systems" admits that there are no objective criteria for determining job worth. So, any alleged determination of job worth must be subjective and wholly reflective of the biases of those making the evaluation.

The GAO report reveals its own subjective bias on page one wherein it uses figures allegedly showing that the average "earnings for year-round, full-time female workers" are only 59% of men, and then asserting that it "is not clear why this wage gap exists." This phony statistic insults the intelligence of the reader. Just to mention one reason for the differential, the average "full-time" female worker works a 36-hour week, whereas the average "full-time" male worker works a 44-hour week. Unless you believe that we should all should be paid equally regardless of how many hours we work, this use of the words "wage gap" is dishonest and misleading.

Let's be blunt about the purpose of the Comparable Worth bills. They are an attempt to abandon the present system under which wages are set by millions of freely-made individual decisions between employer and employee, and instead substitute a system by which the wages are set by Compensation Commissars who are given the power of law to enforce their own subjective biases on everyone else.

Those who advocate Comparable Worth have a very particular bias. They want to freeze the wages of blue-collar men while forcing employers to raise the wages of some white- and pink-collar women above marketplace rates. According to the Comparable Worth rationale, blue-collar men are overpaid and their wages should be frozen until white- and pink-collar women have their wages artificially raised to the same level. The proof that this is really what the Comparable Worth debate is all about is in both their rhetoric and their statistics.

I've been debating feminists and listening to their arguments for more than a decade. It is impossible to overlook their rhetoric of envy. I've heard feminist leaders say hundreds of times, "It isn't fair that the man with a high school education earns more money than the woman who graduated from college or nursing or secretarial school."

That complaint means that the feminists believe that truck drivers, electricians, plumbers, mechanics, highway workers, maintenence men, policemen, and firemen earn more money than feminists think they are worth. And how do the feminists judge "worth"? By paper credentials instead of by apprenticeship and hard work, and by devaluing physical risk and unpleasant working conditions.

So the feminists have devised the slogan "Comparable Worth" to make the blue-collar man feel guilty for earning more money than women with paper credentials, and to trick him into accepting a government-enforced wage freeze while all available funds are used to raise the wages of some women.

Statistical proof that the aim of Comparable Worth is to reduce the relative earning power of blue-collar men is abundantly available in the job evaluations commissioned and approved by the Comparable Worth advocates. You can prove this to yourself by making a job-by-job examination of any study or evaluation made with the approval of Comparable Worth advocates; it is always an elaborate scheme to devalue the blue-collar man.

For example, look at the Willis evaluation used in the famous case called AFSCME v. State of Washington. Willis determined that the electricians and truck drivers were overvalued by the state and that their "worth" was really far less than the "worth" of a registered nurse. More precisely, Willis produced an evaluation chart on which the registered nurse was worth 573 points, whereas the electrician was worth only 193 points (one-third of the nurse), while the truck driver was worth only 97 points (one-sixth of the nurse).

The Federal District court accepted the Willis evaluation as though it were some kind of divine law (refusing to listen to the Richard Jeanneret "PAQ" evaluation which produced very different estimates of "worth"). The Federal District court decision (unless it is overturned on appeal) is a device to freeze the wages of electricians and truck drivers until the state finds a way to pay the registered nurse three times and six times as much, respectively.

This is exactly what happened in the recent Los Angeles Comparable Worth settlement. The men's wages were simply frozen while all the raises were given only to women.

How do jobs get certain points? The evaluator invents them, that's how. The Comparable Worth advocates hire an evaluator under a contract in which he is obligated (a) to ignore all marketplace factors and (b) to produce a point scheme to "prove" discrimination against women.

One of the techniques by which this is done is the devaluing of the physical and and working-condition factors so important in blue-collar jobs. This devaluation of blue-collar jobs is always an inevitable result of integrating white-collar and blue-collar jobs in the same evaluation. If the Federal white-collar and blue-collar pay classifications were integrated, the blue-collar employees would be drastically devalued because the Federal white-collar pay system accords less than 5% of the possible points to "physical demands" and "working environment" combined.

The Comparable Worth advocates and evaluators join in a chorus to claim, it's so "scientific" because "worth" is based on education, training, skills, experience, effort, responsibility, and working conditions. The fact is that, once you throw out marketplace factors, the evaluation is completely subjective and just reflect the bias of the evaluator.

The Willis evaluation determined that the "mental demands" on a nurse are worth 122 points, whereas the mental demands on an electrician are worth only 30 points, and the mental demands on a truck driver are worth only 10 points. That's the view of the pro-feminist evaluator. For a contrary view, ask the electrician and the truck driver about the worth of their mental demands.

Comparable Worth evaluations must be recognized as a racket to put people with your own biases on the evaluation team, or to saddle the evaluator with a contract that binds him to produce the results you predetermine.

Not only is the Comparable Worth concept wholly subjective, but it is also wholly arbitrary. It proposes to raise only some women's pay at the expense of men and other women. This arbitrariness is shown by the fact that only those jobs where 70% or more of the employees are female would be eligible for Comparable Worth raises. This was made clear in a devastating analysis of the Wisconsin Governor's evaluation made by the Wisconsin Association of Manufacturers & Commerce.

The Wisconsin Governor's Task Force Study lists the job called Institution Aide as having a "C-W Gap" of $5,132. But the employees in this position would not get a C-W raise because only 67% of the 116 employees are women and Institution Aide cannot be designated a "women's job" unless it meets the 70% test.

Now suppose that the state needs two more Institution Aides. If it hires two women, it will cross the 70% threshold. The state will then have to give all Institution Aides a raise, and it will therefore cost the state $595,000 to hire two women. The personnel manager can easily manipulate the system, depending on whether he is pro-feminist or pro-budget-cutting.

Or, consider the position called Nursing Assistant 3. Because it has 70% women, all 104 employees would be scheduled to get a raise of $3,626 to close the so-called C-W Gap. If the personnel manager simply hires one male or fires two females, he can avoid C-W raises for all and save $377,136 in his budget.

The entire concept of Comparable Worth hangs on sexist comparisons between male-dominated jobs and female-dominated jobs. S. 519 makes this clear by ordering the Commission Commissars to compare "positions held predominantly by female employees" with "positions held predominantly by male employees." What does "predominantly" mean -- 70%, 80%, 51%? The Commission will decide; it is impossible to escape the arbitrary nature of this decision and the way it impacts on workers.

Why should we pay any attention at all to whether the job is held by a man or a woman? Why can't we be sex-neutral and look at the work done instead of at who does it? If pay scales are to be determined by WHO does the job instead of by WHAT work is done, it would be much more equitable to look at whether the worker is or is not supporting a family than to look at whether he or she is a man or woman.

In addition, Comparable Worth is unfair to women in that its effect is to squeeze lower-skilled women out of the job market altogether. The respected economist June O'Neill has written lengthy treatises to show how and why this is the result. But that's not the only way Comparable Worth is unfair to women. It also hurts the women who have moved into non-traditional jobs.

When the Illinois nurses sued the State of Illinois, claiming they should be paid equally with the (mostly male) electricians and stationary engineers, eleven female state employees in nontraditional jobs tried to enter the lawsuit as intervenors. They all work in a job classification called Correctional Officer, which is a euphemism for Prison Guard. The evaluation said that these "male-dominated" jobs are not "worth" as much as they are now paid. Illinois was paying prison guards $145 dollars a month more than entry-level secretaries, but the Comparable Worth evaluation gave secretaries 12 more Comparable Worth points than prison guards.

The women prison guards claimed that the present system of compensation properly rewards them for their special skills, performance of particularly difficult, dangerous and unpleasant work, their willingness to challenge stereotypes and perform nontraditional jobs, and the nondiscriminatory market forces of supply and demand. Put another way, the state has found that it must pay more to hire prison guards than office personnel because of the risks on the job and the unpleasant work.

Ask yourself the question, how many women would be willing to be a prison guard if the pay were the same or less than the pay of a secretary?

Women are already flooding into the so-called traditional "women's job" by the millions. If the pay is raised for those jobs, even more women will seek those jobs and abandon plans to go into non-traditional lines of work. At the same time, business will eliminate jobs in order to cut costs, and low-skilled women will be laid off. That's why Clarence Pendleton, chairman of the U.S. Commission on Civil Rights, says that Comparable Worth for women is as self-defeating as saying, 20 years ago, that the way to improve the economic lot of blacks would be to raise the pay of Red Caps.

We are all aware that Comparable Worth has in recent months become a controversial issue on the media. The pro-feminist bias of the media has meant a pro-Comparable Worth bias on most television programs.

So it was with particular interest that I discovered a confidential and copyrighted memorandum on Comparable Worth distributed by the legal department of the National Association of Broadcasters for the benefit of its TV and radio station members. This memorandum warns stations to "think very carefully before undertaking any formal study of the relationship between the 'value' or 'difficulty' of the positions held by their employees and the salaries they receive." Be sure to consult your lawyer, the memorandum says. "If an employer's only motive is to protect itself against the hazards of new theories of wage discrimination like Comparable Worth, it is fair to say that a job evaluation study is far more likely to be a burden than a boon."

That's good advice, not only for television and radio broadcasters, but for any employer including the Federal Government and state governments. Any public or private employer who commissions a study or job evaluation based on alleged "worth" of jobs is inviting not only a lawsuit but also endless charges of unfairness to men and women.

America has the highest standard of living and the highest wages in the history of the world precisely because wages are set by the marketplace in a free economy. We urge the Senate to reject all notions that an elite group of Commissioners can decide what people are worth. No one will accept their decisions as fair.

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

MAR 1 1985

B-217675

The Honorable William E. Dannemeyer
House of Representatives

Dear Mr. Dannemeyer:

Subject: Response to Questions Related to Comparable Worth and Sex-Based Wage Discrimination (GAO/GGD-85-40)

This report is in response to your January 25, 1985, request that we answer a series of questions on the effectiveness of the comparable worth concept in identifying and remedying sex-based wage discrimination. In answering those questions, we relied extensively on our work in preparing our report entitled Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems (GAO/GGD-85-37), a copy of which is also being furnished.

Question 1: Is there any language in current law affecting federal pay or classification which differentiates on the basis of sex?

Answer: Our review of the laws governing federal civilian employee pay and classification under the General Schedule (5 U.S.C. Chapter 51) and the Federal Wage System (5 U.S.C. Chapter 53, Subchapter IV) indicates there is no statute which differentiates between job classification or pay levels on the basis of sex. We also conducted a computer search of the entire United States Code and found only one statute, applicable to members of the uniformed services, which differentiates on the basis of sex. The provisions of 10 U.S.C. §6015 (1982), pertaining to the assignment of female military personnel, state that:

> "The Secretary of the Navy may prescribe the manner in which women officers, women warrant officers, and enlisted women members of the Regular Navy and the Regular Marine Corps shall be trained and qualified for military duty. The Secretary may prescribe the kind of military duty to which such women members may be assigned and the military

(966201)

> authority which they may exercise. However, women may not be assigned to duty on vessels or in aircraft that are engaged in combat missions nor may they be assigned to other than temporary duty on vessels of the Navy except hospital ships, transports, and vessels of a similar classification not expected to be assigned combat missions."

Question 2: How was the "comparable" pay concept treated in the debate on the Equal Pay Act in 1962 and 1963?

Answer: The legislative history of the Equal Pay Act shows that Congress rejected language requiring equal pay for "comparable" work in favor of the "equal work" standard now contained in the act. The bill which eventually became the Equal Pay Act required equal pay for "work of comparable character on jobs the performance of which requires comparable skills" (HR 11677). It was reported out of the House Committee on Education and Labor and introduced in the full House in 1962. However, the bill was amended later that year to require equal pay for "equal work the performance of which requires equal skills." In final debates over the Equal Pay Act, several Members of Congress noted that, in their view, the intent of the amendment was to narrow the coverage of the act, by including only jobs which are virtually identical.

Question 3: Is consideration given to the gender of employees in federal pay surveys which obtain data on pay in the private sector?

Answer: No consideration is given to the gender of employees in private sector pay surveys made by the federal government. Three such surveys are conducted each year: (1) the National Survey of Professional, Administrative, Technical, and Clerical Pay; (2) the Federal Wage System Appropriated Fund Survey; and (3) the Federal Wage System Nonappropriated Fund Survey. The primary objective of each is to obtain pay rates for comparable occupations in the private sector.

Question 4: Do any of the following factors influence individual earnings: marital status; parental status; age; educational level of parents; undergraduate major; field of employment; quality of undergraduate/graduate schools; job-related training and education; number of years of prior employment experience; number of years of continuous employment (with or without the same employer)? What would be the impact on a job evaluation of failing to control or account for these factors?

Answer: Some of these factors have been shown to influence individual earnings, although the degree of influence can vary by occupation, sector of employment, and other conditions. Studies conducted to examine the effect of some of these factors are discussed in pages 13 through 17 of our report Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems (GAO/GGD-85-37).

All of the factors are characteristics of individuals, not characteristics of jobs that those individuals may hold. Since a basic premise of job evaluation is that the job and not the job occupant is measured, failure to control or account for these factors in a job evaluation study would have no effect on a job's evaluated worth.

Question 5: Is it possible for two job evaluation experts to reach different conclusions about the relative ranking of the same job?

Answer: It is possible for two job evaluation experts to reach different conclusions about the relative ranking of the same job. This is primarily because all job evaluation systems are, to some extent, subjective. Pages 30 and 31 of our report on options for a federal pay equity study discuss several criticisms of job evaluation in measuring the worth of jobs. However, as discussed on pages 31 and 32 of that report, the degree of subjectivity in a job evaluation can be lessened. For example, use of a point-factor evaluation system which quantitatively assigns points to segments of a job is generally considered less subjective than a ranking system which nonquantitatively considers the value of a whole job. The subjectivity of evaluation results may also be reduced (and their reliability increased) by (1) accurate job analysis, (2) careful job description, (3) care in factor selection, description, and weighting, (4) use of job evaluation committees rather than individual evaluators, and (5) involvement of job incumbents and supervisors in the evaluation process.

I hope this responds to your request for information in these areas. We are sending copies of this report to the requestors of our report on options for conducting a federal pay equity study and making copies available to others upon request.

Sincerely yours,

W. J. Anderson

William J. Anderson
Director

counsel
from the legal department

L-508
April 1985

EEO AND COMPARABLE WORTH: AN OVERVIEW OF SEX-BASED WAGE DISCRIMINATION */

I. INTRODUCTION....................................1
  A. "Comparable Worth"...........................2
II. LEGAL BACKGROUND..............................3
  A. Intentional and Unintentional Discrimination............................4
  B. The Main Theories of Wage Discrimination.............................5
  C. The "Superstar Scenario"...................6
III. THE PRACTICAL SIGNIFICANCE OF WAGE DISCRIMINATION RULES.....................7
IV. CHECKLIST FOR AVOIDING "COMPARABLE WORTH" PROBLEMS...................8

I. INTRODUCTION

In addition to hiring, promotion, firing and other personnel actions, equal employment opportunity (EEO) principles also come into play with regard to employee salaries. This memorandum gives broadcasters a "short course" in this still-developing area of the law, and offers some specific guidelines.

A few years ago, the meaning of "sex-based wage discrimination" was clear. After passage of the federal Equal Pay Act in 1963, employers were thought to be guilty of wage discrimination against women only if they paid women less than men who did the same work. This rule was intended to end the practice of paying higher wages to a male "breadwinner" than a "working woman" even though they performed the same job.

---

*/ This memorandum was prepared by Lawrence Z. Lorber, Esq. and J. Robert Kirk, Esq. of the Washington, D.C., office of the law firm of Breed, Abbott & Morgan. They represent employers in employment discrimination, labor and administrative law.

© 1985 National Association of Broadcasters

National Association of Broadcasters/1771 N Street, N.W./Washington, D.C./20036

But by the mid-1970s, some began to argue that the requirement of equal pay for equal work was of no help to many women working in "female occupations" who had no male colleagues against whose wages they could measure the fairness of their own. In fact, national labor statistics showed that roughly 80 percent of all female employees worked in only six occupational categories, and within those six categories females outnumbered males by a margin of eight or nine to one.[1/] The claim is made that women in sex-segregated occupations are paid low wages because they do what was viewed traditionally as "women's work." Rather than await the sexual integration of the workplace promised by current law and changing social norms, proponents of "pay equity" argued for wage parity between men and women even if they performed different work.

A. "Comparable Worth"

The most prominent new theory of compensation has been given the title of **"comparable worth,"** which is intended to provide an alternative basis for equating work done by men and women even though the content of their jobs is different. The theory rests on four key principles:

(1) jobs are not all of equal worth;

(2) workers should be paid in proportion to the worth of their jobs;

(3) non-market methods exist, or can be developed, for determining the worth of jobs; and

(4) these non-market methods are preferable to the market because they can be based exclusively on legitimate measure of worth and can exclude the effects of sex discrimination.

Except for the first, each of these principles has been the subject of a raging debate between advocates and opponents of "comparable worth."

Because of the emergence of this new concept of discrimination, employers have had to broaden their concept of wage discrimination beyond the traditional notion of "equal pay for equal work" in order to recognize situations which might be ripe for wage discrimination litigation, and to be ready to react to impending legislative developments. It should be understood that the theory of comparable worth

---

[1/] Lorber, L.A., Kirk, J.R., Samuels, S.L., and Spellman, D.J., Sex & Salary: A Legal and Personnel Analysis of Comparable Worth, Ch. 3, p.7 (American Society for Personnel Administration Foundation, Alexandria, Virginia, 1985).

and most other new concepts of wage discrimination have been rejected almost universally by the courts. Nevertheless, the cost of litigation and accelerating social pressures make the avoidance of compensation disputes a practical business goal. Moreover, a number of state legislatures have enacted new laws which seem to adopt new theories of wage discrimination, and even more states, as well as Congress, are considering similar legislation. Employer reaction to these developments should be tailored closely to the employer's current business strategies, and should not be merely an unfocused reaction to the comparable worth controversy.

II. LEGAL BACKGROUND

The federal Equal Pay Act requires equal pay for men and women in the same establishment who do equal work in jobs which require equal skill, effort and responsibility, and which are performed under similar working conditions. In applying the law, courts have never required that the jobs in question be identical to warrant equal pay. Even if the titles for two jobs are different, equal pay will be required under the Act if they are "substantially similar" in skill, effort, responsibility and working conditions. Thus, in a classic case, the wages of female nurses' aides were increased to the amount paid to male hospital orderlies, because the overall nature of their work was substantially similar.2/

Nevertheless, the Equal Pay Act has never supported a claim of wage discrimination where the content of the jobs being compared was merely "comparable," but not substantially equal. In rejecting claims of equal pay for comparable work, courts have uniformly recited the legislative history of the Equal Pay Act. For 17 consecutive years Congress refused to enact versions of the Act which would have required equal pay for "*comparable*" work. Only when the bill was rewritten in 1963 to simply require equal pay for *equal* work was the law enacted.

Because the legislative history of the Equal Pay Act so clearly excludes wage discrimination claims by women doing work that is *different* from work done by men receiving higher pay, proponents of pay equity have looked elsewhere for federal authority to support their claims. The most recent legal battles concerning wage discrimination have been fought over the meaning of Title VII of the Civil Rights Act of 1964.

2/ *Brennan v. Prince William Hospital Corp.*, 503 F.2d 282 (4th Cir. 1974), *cert. denied*, 420 U.S. 972 (1975).

A. Intentional and Unintentional Discrimination

Title VII prohibits discrimination on the basis of sex with respect to any employment benefit, including wages. Over the years, the Supreme Court has defined two ways in which an employer may be liable for discrimination under Title VII. The first is based on the concept of intentional discrimination. To support liability for wage discrimination a claimant must prove, either by direct or circumstantial evidence, that her employer paid her lower wages simply because she is a woman, and not because of some legitimate factor other than sex.

The second road to recovery does not depend on showing that an employer intended to discriminate. Rather, under this approach a claimant may succeed based on proof that a policy which is "facially neutral" impacts women disproportionately (*e.g.*, if salary were based on physical height), and that there is no business justification for the policy. Thus, under general Title VII principles, pay equity advocates argued that sex-based wage discrimination claims could be won under Title VII even without proof of substantially equal work done by men and women.

But the situation was complicated by something called the Bennett Amendment to Title VII. In essence, the Bennett Amendment told courts to read the sex discrimination provisions of Title VII in light of the Equal Pay Act, which had been enacted just one year earlier. But the language of the amendment was unclear and subject to wide interpretation. The basic controversy was whether or not the Bennett Amendment limited wage discimination claims under Title VII only to those based on a comparison of male and female employees doing substantially equal work. This issue was of tremendous importance to advocates of pay equity. If Title VII claims require the same proof of equal work required under the Equal Pay Act, there would be no federal remedy for women working in "female occupations" who had no male colleagues with whom to compare their wages.

In 1981, the Supreme Court resolved this issue in the now famous case of *County of Washington v. Gunther*.[3] The Court held that sex-based wage discrimination claims under Title VII should *not* be dismissed simply because they are not based on proof of equal work done by men and women. The Court held that if a claimant presents proof that an employer intended to discriminate on the basis of sex in setting wages, she need not prove all of the elements of an Equal Pay Act claim. However, the decision was perhaps most important for what it did *not* resolve. The Court refused to specify the kind of proof that would be sufficient to sustain a claim of sex-based wage discrimination under Title VII, leaving that matter for lower courts to resolve. But the Court took pains to point out that the case before it did not rest on the controversial theory of comparable worth, and did not require the court to review the "value" or "worth" of various jobs.

---

[3] 452 U.S. 1612 (1981).

B. The Main Theories of Wage Discrimination

Since the Gunther decision, many theories of wage discrimination other than "equal pay for equal work" have been tried. In general, these theories can be grouped into three different types:

1. **Equal pay for "similar work":** One approach has been to argue that if men and women do work that is similar, even though not substantially equal for purposes of the Equal Pay Act, they should receive equal pay.
2. **Equal pay for work of "equal worth":** This is the concept that underlies the theory of comparable worth. The notion is that men and women should be paid the same, regardless of the similarity of their work, if their jobs have been rated equally by some evaluation mechanism, such as an employer's job evaluation system.
3. **"Pay parity":** Some argue that the overall average earnings of men and women should be the same regardless of other factors. When someone argues that the "wage gap" (i.e., that on average women earn 60 percent of the annual wages of men) should be eliminated regardless of any other factors, they are relying on the concept of "pay parity." This is probably the most extreme notion of wage discrimination. While the complaint that women are paid with "60¢ dollars" has served as a rallying cry, this concept has not been an important part of any serious debate about pay equity.

To date, none of these concepts of wage discrimination has met with more than token success in the courts. One case seen by some as an exception to this trend was AFSCME v.

State of Washington,[4] where a federal district court imposed liability on the State of Washington for failing to adjust its salary structure according to a study which suggested that the wages paid to employees in female-dominated occupations were inappropriately low compared to wages paid to men doing jobs deemed to be of "comparable worth." However, this decision is on appeal to the Ninth Circuit and may well be overruled. In another case decided after the lower court's decision in AFSCME, the Ninth Circuit held that wage discrimination claims under Title VII must be based on a traditional presentation of evidence of intentional discrimination;[5] in other words, merely showing that the average wages paid to employees in predominantly female jobs are less than the average wages paid to predominantly male jobs will not be sufficient to support a wage discrimination claim.

New concepts of wage discrimination under Title VII have been rejected by the courts largely because courts have refused to reject the use of market rates for labor in wage-setting. In essence, courts have held that employers who pay the "going rate" for a particular type of labor cannot be said to discriminate on the basis of sex even if the market rates for male-dominated occupations are higher than those for female-dominated occupations. And even if market rates were found to reflect some element of general, social discrimination against women, courts point out that Title VII is meant to provide remedies against individual employers guilty of discrimination, and is not intended to hold a particular employer liable for past discrimination by other employers.

In general, this "market rate defense" does not apply to the classic concept of equal pay for equal work. If men and women do the same work and there is a going rate for that type of labor, then by definition the wages of these men and women cannot be differentiated on the basis of a single market rate.

C. The "Superstar Scenario"

There is an important exception to this general rule, however, in what might be termed the "superstar scenario." A recent case illustrating this point involved two professors of art history, one male and one female, who did "substantially equal" work within the meaning of the Equal Pay Act. The female professor had received an offer of employment, at a substantially higher salary, by another university. The question was whether her employer violated the Equal Pay Act if it matched this offer but did not raise the salary of her male colleague. The First Circuit Court of Appeals held that under these circumstances it was lawful to pay unequal wages for equal work.[6] In essence, the Court said the university could rely on the market rate for this individual, so long as it showed that the competing university had made a bona fide offer. Under this rule, for example, male and female co-anchors on an evening news broadcast could be paid different wages if the marketplace "bid" differently for their individual services.

---

[4] 578 F. Supp. 846 (W.D. Wash. 1983).

[5] See Spaulding v. University of Washington, 740 F.2d 686 (9th Cir. 1984), cert. denied, 105 S.Ct. 511 (1984).

III. THE PRACTICAL SIGNIFICANCE OF WAGE DISCRIMINATION RULES

The first lesson to be learned from these evolving concepts of wage discrimination is that sex integration in the work place is a good thing. If a firm employs both male and female secretaries, it would be very difficult for female secretaries to argue that secretaries are paid less because they are women. Thus, to the extent an employer can sexually integrate each category of its wage structure, the likelihood of wage discrimination claims which cut across job categories is greatly diminished.

Second, it is very important for every employer to understand why it pays what it pays. Even employers with "no system" have some system for setting wages, and that system may need to be explained in response to a claim of wage discrimination. Many lawsuits alleging wage discrimination turn on the quality of an employer's explanation of the principles by which it sets wages. For example, if a system relies on market rates, it is important to keep records of the market data used to guide salary decisions. Employers must be especially wary of a salary system which is older than the memory of current managers and which could be based on a system not designed to comply with modern sex discrimination laws.

Finally, employers must think very carefully before undertaking any formal study of the relationship between the "value" or "difficulty" of the positions held by their employees and the salary they receive. Some have suggested incorrectly that undertaking a job evaluation study provides protection against claims of wage discrimination. In fact, if the study shows, for example, that women are paid less than men holding jobs of equal value, the likelihood of wage discrimination litigation will be greatly increased if the employer cannot or does not take corrective action.

On the other hand, some EEO lawyers have stated flatly, "don't do a study." But this is also an excessively

---

6/ Winkes v. Brown University, 747 F.2d 792 (1st Cir. 1984).

narrow view. There may be good reasons to do a study even though one recognizes that preventing sex discrimination litigation is not one of them. For example, a job evaluation might help bring needed coherence to a wage system that has developed ad hoc over the years, or it might be used to show that the wage demands of some employees are inconsistent with the more modest value to the firm of their positions. The point is that the risks and benefits of doing a job evaluation must be weighed carefully with a station's own counsel before such a study is begun. If an employer's only motive is to protect itself against the hazards of new theories of wage discrimination like comparable worth, it is fair to say that a job evaluation study is far more likely to be a burden than a boon.

IV. CHECKLIST FOR AVOIDING "COMPARABLE WORTH" PROBLEMS

This overview of the emergence and significance of the concept of comparable worth provides only a brief glimpse of some recent developments in the field of wage discrimination.[7] Nevertheless, a few significant guidelines for employers, including broadcasters, emerge from this discussion:

- ☐ Be sure to provide equal pay for equal work.
- ☐ Make sure employment practices and policies are based on considerations other than the sex of employees.
- ☐ Avoid sex-based positions and salary classifications (e.g., male-only or female-only jobs).
- ☐ Keep records of the business reasons for wage decisions.
- ☐ Don't initiate a job evaluation believing it will be an insurance policy against wage discrimination litigation.

The future of comparable worth and other new theories of wage discrimination is very difficult to predict. While these theories have not been received warmly by the courts, so far, legislatures could immediately change the outcome of litigation by enacting new law. This has already been done in at least 21 states.[8] If the recent flurry of judicial and legislative activity is any indication, employers will be hearing about comparable worth and other new theories of wage discrimination for years to come.

7/ For a much more complete discussion of this rapidly developing field, see Sex and Salary, referenced in footnote 1 above.

8/ Id. at Appendix a.

Senator STEVENS. Our next witness is Hon. James G. Martin, the Governor of North Carolina.

Senator Helms was here to introduce you, Governor, but he is in another meeting, and he has asked that we place his statement in the record prior to your statement. I want you to know we are pleased to have you with us.

[Senator Helms' prepared statement follows:]

PREPARED STATEMENT OF SENATOR HELMS

Mr. Chairman, it is an honor to appear before you today to introduce to this committee the Honorable James G. Martin, Governor of North Carolina.

Mr. Chairman, Governor Martin is no stranger to this place. He served in Congress for twelve years before being elected Governor in 1984. He ably represented the people of North Carolina's Ninth Congressional District, which includes Charlotte, our largest city.

It is only fitting that Jim Martin is here before this committee to discuss the concept of comparable worth and the plausibility of implementing a study of pay equity in the federal government. The North Carolina State Legislature has just rejected state legislation which would have mandated a study of the pay equity in the state government.

Comparable worth is not a women's rights issue. Rather, it is an attempt by the government to control the marketplace, greater control than the American public has ever seen before. I oppose any legislation that would recognize or lend the appearance of legitimacy to the unsound concept of "comparable worth." Any attempt on the part of the Federal Government to identify and eliminate pay differentials based on comparable worth without proof of discrimination would be as unworkable as it would be unwarranted. Clearly, as a matter of public administration, even preliminary steps toward implementation of the "comparable worth" theory would be a serious and grave error.

I appreciate your inviting Governor Martin to testify, and I am pleased to be here to introduce him to you.

TESTIMONY OF HON. JAMES G. MARTIN, GOVERNOR OF THE STATE OF NORTH CAROLINA

Governor MARTIN. Thank you, Senator and members of the subcommittee. I am Jim Martin, and I am here as Governor of North Carolina to share with you our experience on the subject of comparable worth.

Wages and salaries represent an increasing percent of the cost of operating Government and business. As a result, human resource issues have taken on greater and greater importance. One issue that has received much attention recently is comparable worth. This issue would broaden the sound legal requirement of equal pay for equal work, to equal pay for similar or perhaps comparable work, even if it is unequal work.

Like many artfully phrased titles, comparable worth does have a superficial attractiveness about it. It suggests that behind the label there is some foundation of fairness. In fact, however, all it does is repudiate the marketplace, reject the fair play of supply and demand and replace it with a socialistic allocator, where by some governmental formula or consultant will artificially determine the statutory economic value of each job without evaluating its true economic value.

It is based on a belief that we can select a formula that will inherently give just the right weight to each factor of a job's description and requirements and qualifications without regard to whether that job has an oversupply or a shortage of workers and somehow, then, socially engineer a fair system for all.

Let me tell you our experience with it. The State of North Carolina recently considered modifying its personnel system for State employees to encompass the comparable worth doctrine. But it has now decided against this approach. In June 1984, the North Carolina General Assembly passed legislation directing that a pay equity study be conducted and authorized $650,000 for this effort. Although named a pay equity study, the impetus for ratifying this provision came from a June 1984 report by a State task force on comparable worth. This report recommended the development of an equitable job evaluation and pay system that would establish the comparable worth of State jobs on the basis of a point factor system.

The resulting legislation directed that the study encompass all of the State's classified employees who are subject to the State Personnel Act—this totals about 84,000 employees—and directed that a consulting firm be hired not later than December 15, 1984 to conduct a study. That was done. The consultant studied the State personnel system so it could identify wage policies that inhibited pay equity and develop a job evaluation and pay system.

The study included a factor based on supply and demand with that factor somehow receiving equal weight. A final report was to be produced by April 1, 1986.

As directed by the legislature, efforts were begun to hire a contractor. The contractor was to evaluate any policies that would inherit pay equity; develop a job evaluation system which would define an overall structure to categorize jobs and to develop a method of evaluating jobs to place them in that structure; to develop a pay system which would survey pay in relevant job markets and relate the results to the job evaluation structure and then recommend how to implement these systems, including costs, alternatives, and phasing in the system.

This information was provided to 130 contractors. Eight of them actually made proposals. One of these, Psychological Services, Inc., was selected in December 1984.

From the beginning, it had been apparent that it would be difficult to successfully complete the study. The problems evolved 1nto two categories: The problems with the logistics of the study itself; and more importantly, problems and concerns from a broad range of citizens on the basic comparable worth doctrine.

With regard to the problems of conducting the study, most difficult was the language of the legislation requiring that a factor based on supply and demand be given equal weight. This language attempted to assure that labor market concerns were addressed but seemed to be contrary to comparable worth ideals which related one job to another without concerning for the market values of those jobs.

A second concern was that fairness called for individual evaluation of each of the 84,000 employees to fit them into that system. Clearly, this would be a massive undertaking, even for so expert a consultant.

As significant as these problems were, however, the broader concerns on comparable worth doctrine and its implications ultimately proved the most convincing. These arguments were spearheaded by our business community. Foremost was the concern that there was no way to accurately estimate what the cost of salary adjustments in the State budget would be. Would increases in some salaries be offset by salary reductions for jobs that were rated lower by the formula than by the marketplace?

Or would it simply be a bogus excuse to raise some salaries without lowering any others and thus raid the taxpayers? After all, their interests would not be reflected or factored into the formula.

That had another catch to it. If the completed study recommended adjustments beyond the ability of the State to pay, then we might have directed ourselves into a situation similar to that of the State of Washington, where a study was commissioned and reported but the results not acted upon, after which a court of law somehow concluded that the study itself was invested with the power to compel its advice to be implemented.

Second was the concern that comparable worth introduces an artificiality into wages and salaries. By disregarding supply and demand, this may hold pay below market rates for jobs with a shortage of workers. What would that do to the shortage? It would make it worse. It would make it more difficult to hire and retain employees in these categories, which otherwise could respond to the imbalance of supply and demand by the usual market method of bidding up the wages. Conversely, categories with an oversupply of workers might be paid above the market.

Businesses, particularly those in cities where there are large State employee concentrations were concerned that they would then be forced to meet categories in salaries set above the market rates.

Finally, there was significant concern by business and industry that the move by the State toward comparable worth signaled an eventual requirement that the doctrine be forced on private enterprise. Their response was decidedly in favor of the present supply and demand approach to setting wages.

The result of these concerns was that the general assembly, upon returning to Raleigh in February of this year, began a reevaluation of the study requirement, and in April 1985, directed that the study be terminated.

While there is no doubt that we must take all possible steps to pay our employees fairly and equitably, we supported the termination of that study. Instead, we are making what we believe to be better efforts by trying to improve our existing classification system and developing an improved way of providing incentives to those employees who are our better performers. We believe this is the way to provide the opportunities that our employees are looking for.

Thank you, Mr. Chairman, for the opportunity to be here.

Senator STEVENS. Thank you for taking the time to testify.

You have had a very current experience, Governor. It is a real cloudy picture. Our State has had the opposite result, but then we deal with numbers that are far less than anyone else. Perhaps that is why.

Senator Evans.

Senator EVANS. Let me just say in passing, Mr. Chairman, you deal with numbers far less until it comes to wages.

Senator STEVENS. Wages are always higher in Alaska, because costs of transportation are higher, in particular.

Senator EVANS. There are times I sit on this side of the table, Governor, and wish I were back operating as you have so well in North Carolina. I should correct one misunderstanding that I think is generally held in terms of the State of Washington's experience. It was, and as I attempted to tell Mrs. Schlafly, I thoroughly disagree with the court decision. I think it was a misunderstanding and misrepresentation of what the study was all about, which was to attempt to set some rational internal alignments and not to do as the count did, which was to more than respond to the demands of the unions who brought the suit.

In other words, Judge Tanner gave them more than they asked for—assuming that everyone ought to be brought up to the highest wage.

So it is a misunderstanding of the situation. We had a budget proposal in 1977 over a 10-year period that would gradually, and with very little extra cost, complete the results of that study. I think it would be a very positive action. Unfortunately, that was coincident with my leaving office. While I presented the budget to my successor, the ultimate irony was that the first woman governor in the the state's history abandoned the process and led us to the lawsuit.

I have a few questions. It is my understanding that in North Carolina in the Occupation Information Coordinating Committee report a couple of years ago, "Career Choices in North Carolina," you said the occupation of the secretary is one of the 10 most in demand jobs in 1983 and one of the 10 hardest to fill, and yet secretaries' salaries have not increased as demand has. Doesn't that indicate that maybe there is something wrong in internal alignments and in the marketplace's response?

Governor MARTIN. It sure did highlight the situation in the marketplace. That is why those wages have been increased in the private sector, as well as in the public.

One of the things we are recognizing is that there are many jobs that are given the title of secretary that have much more responsibility than ordinarily would be identified by that title, and there are adjustments in relation to that.

Senator EVANS. I understand that even the requirements of a secretary today with essentially the same responsibilities as 5 or 10 years ago has to deal with a lot more complex and sophisticated equipment and problems than at that time, and most liked that increase has been greater than the average marketplace increase of wages during that time.

Governor MARTIN. Some of those jobs more than others, and now they are being identified by giving titles that more correctly identify what they do, such as word processing. The same is true with public school teachers. That is an example of where the marketplace is pushing us to increase the wages for schoolteachers, because the supply is not keeping up with demand.

Senator EVANS. Are you attempting in North Carolina, incidentally, to institute any kind of a merit pay concept for teachers?

Governor MARTIN. Yes, sir. I am willing to call it that. I can call it by the euphemisms, the master teachers concept, the mentors, the others. Career ladder is a term that is frequently used in our area, meaning to develop the career of teaching in a way that takes into account competence and effectiveness in a classroom and provides better pay for better teaching.

Senator EVANS. I thoroughly agree with you. I would say it in exactly the same terms, but I believe the merit pay concept makes good sense. Doesn't the very concept of merit pay require job evaluation?

Governor MARTIN. It requires an evaluation of how well the individual is carrying out that job and what that productivity is. There is nothing wrong with that. It has done a lot in the private sector, as well as others.

Senator EVANS. The complaint of many of those, at least as I understand it, of teachers and others who oppose the whole concept is to say that those job evaluations are subjective and not objective.

Governor MARTIN. Of course. The evaluation of the work of employees is subjective. That is very difficult. You can talk to teachers who believe it is difficult to evaluate the work of teachers. I was a mild-mannered chemistry professor in real life for 12 years, and my work was evaluated. I think it is a very important part of management to evaluate the output, the productivity, the effectiveness, the cooperativeness of employees and those who help to get the job done to see that they are encouraged to stay on the job.

That is quite different from a system that would come in and impose a formula. And it doesn't take that into account. It takes into account other kinds of considerations prior to employment.

Senator EVANS. You wouldn't find the concept of subjective analysis in and of itself a bad one, which many people seem to use that term subjective as if it were a foreign concept and not very often used.

Governor MARTIN. I would say my objection is that what is contemplated by comparable worth analysis would not be subjective, it would be artificially objective in a way that it can't assign the appropriate value to each factor that would be taken into consideration. It depends too highly on who makes the decision. Therefore, it would appear to be very subjective there, but it would not be truly subjective in evaluating the work of the employees themselves.

It is subjective in trying to take some classifications and a series of items that have been thrown on the table and try to fit them into a formula. I would say that is not really subjective at all.

Senator EVANS. I guess you would have to settle for subjectively objective.

Governor MARTIN. I wouldn't settle for that at all.

Senator EVANS. Thank you, sir.

Governor MARTIN. Thank you very much.

Senator STEVENS. Thank you very much, Governor. Again, I thank you very much for coming and sharing with us the experience that you have had.

[Governor Martin's prepared statement follows:]

TESTIMONY FOR GOVERNOR MARTIN REGARDING THE NORTH CAROLINA EXPERIENCE ON COMPARABLE WORTH

Wages and salaries represent an increasing percentage of the cost of operating government and business. As a result, human resource issues have taken on greater and greater importance. An issue that has received much attention recently is comparable worth. This issue would broaden the legal requirement of equal pay for equal work, to equal pay for similar or comparable work. Like many artfully phrased titles, "Comparable Worth" has a superficial attractiveness. It suggests that behind the label there is some foundation of fairness. In fact, however, all it does is repudiate the marketplace, reject the interplay of supply and demand, and replace it with a socialistic allocator whereby some governmental formula or consultant will artificially determine the statutory economic value of each job without regard to its true economic value. It is based on a belief that we can select a formula that will inherently give just the right weight to each factor of a job's description and requirements and qualifications, without regard to whether that job has an oversupply or shortage of workers, and somehow socially engineer a fairer system for all.

The State of North Carolina has recently considered modifying its personnel system for State employees to encompass the comparable worth doctrine, but ultimately decided against this approach. In June of 1984, the North Carolina General Assembly passed legislation directing that a pay equity study be conducted, and authorizing $650,000 for this effort. Although named a "pay equity" study, the impetus for ratifying this provision came from a June 1984 Report by a State Task Force on Comparable Worth. This Report recommended the development of an equitable job evaluation and pay system that would establish the comparable worth of State jobs on the basis of a point factor system. The resulting legislation directed that:

- The Study encompass all of the State's classified employees, who are subject to the State Personnel Act; this totals about 84,000 employees.
- A consulting firm be hired not later than December 15, 1984 to conduct the Study...which was done.
- The consultant "study the State Personnel System so it can identify wage policies that inhibit pay equity and develop a job evaluation and pay system...."
- The Study "include...a factor based on supply and demand", with that factor receiving "equal weight."
- A Final Report be produced by April 1, 1986.

As directed by the Legislature, efforts were begun to employ a contractor. The contractor was to:

- Evaluate any policies that would inhibit pay equity.

- Develop a job evaluation system, which would define an overall structure to categorize jobs, and develop a method of evaluating jobs to place them in that structure.
- Develop a pay system, which would survey pay in relevant job markets and relate the results to the job evaluation structure.
- Recommend how to implement these systems, including costs, alternatives, and phasing approaches.

This information was provided to 130 contractors. Eight actually made proposals. One of these, Psychological Services, Inc., was selected in December, 1984.

From the beginning, it had been apparent that it would be difficult to successfully complete the Study. Problems evolved into two categories: problems with the logistics of the Study itself, and more importantly, problems and concerns from a broad range of citizens on the basic comparable worth doctrine.

With regard to the problems of conducting the Study, most difficult was the language of the legislation requiring that a factor based on supply and demand be given equal weight. This language attempted to assure that labor market concerns were addressed, but seemed to be contrary to comparable worth ideals which relate one job to another without concern for the market values of those jobs. A second concern was that fairness called for individual evaluation of each of the 84,000 employees; clearly, this was to be a massive undertaking.

As significant as these problems were, however, the broader concerns on comparable worth doctrine and its implications ultimately proved the most convincing. These arguments were spearheaded by our business community. Foremost was the concern that there was no way of accurately estimating what the cost of salary adjustments, if any, might be. And, if the completed Study recommended adjustments beyond the ability of the State to pay, then we might have directed ourselves into a situation similar to the State of Washington, where a study was commissioned, but the results not acted upon, after which a Court of Law somehow concluded that the study itself was invested with the power to compel its advice to be implemented. Second was the concern that comparable worth introduces an artificiality into wages and salaries. This may hold pay for certain jobs below market rates with a shortage of workers, making it difficult to hire and retain employees in these categories which otherwise could respond to the imbalance of supply and demand by the market adjustment of bidding up wages. Conversely, pay in other categories with an oversupply of workers may be pegged above market. Businesses, particularly those in cities where there are large State employee concentrations, were concerned that they would be forced to meet salaries in categories set above market rates. Finally, there was significant concern by business and industry that the move by the State toward comparable worth signalled an eventual requirement that the doctrine be forced upon private enterprise. Their response was decidedly in favor of the present supply-and-demand approach to setting wage rates.

The result of these concerns was that the General Assembly, upon returning to Raleigh in February of this year, began a reevaluation of the Study requirement. In April, 1985, they directed that the Study be terminated. While there is no doubt that we must take all possible steps to pay our employees fairly and equitably, we supported the termination of the Study. Instead, we are making what we believe to be better efforts by trying to improve our existing classification system, and developing an improved way of providing pay incentives to those employees who are our better performers. We believe this is the way to provide the opportunities our employees are looking for.

Senator **Stevens**. Our final witness is Prof. Carin Clauss.

Good morning.

Let me state that before you start, professor, if I may, that this is the last of a series of hearings that we will have. This matter is pending before the full committee. The bill has not been referred to the subcommittee. These hearings were held to keep a commitment that I made on the floor last year when an amendment regarding the issue of comparable worth was offered and the proponents sought to have a hearing on the subject before this subcommittee during the early part of this year.

I have tried to comply with that commitment that I made, and I think this completes a fair and balanced hearing on the subject. Any further discussion of this matter that has been before this subcommittee must originate now before the full committee.

I make that statement now, because I have been called to a meeting and I must leave at about 7 minutes after, but I will stay as long as I can.

Thank you very much, Professor Clauss.

TESTIMONY OF CARIN CLAUSS, UNIVERSITY OF WISCONSIN LAW SCHOOL, MADISON, WI

Ms. **Clauss**. Thank you very much, Mr. Chairman, Senator Stevens, and Senator Evans. I appreciate very much the opportunity to appear before you today.

Senator **Stevens**. That is perfectly all right.

Ms. **Clauss**. Thank you.

Currently, I am teaching law at the University of Wisconsin. Prior to that, I worked at the U.S. Department of Labor for 18 years, from 1977 to 1981. I was Solicitor of Labor, and before that I was in charge of litigation programs, including enforcement of the Equal Pay Act. In fact, I briefed and reviewed all of the first 35 courts of appeal cases under that statute.

I am currently vice chairman of the Wisconsin task force on comparable worth. In that capacity, we have dealt with many of the issues that face you today. I might just mention in passing that on July 17, last week, the Governor of our State signed legislation which commits the State of Wisconsin to eliminating pay inequities based on gender and race.

It has directed that implementation of this policy should begin as of July 1, 1986. I would be happy to answer questions about the Wisconsin study, but the main issue that I wish to address today is the concern that has been expressed by many of those who appeared here today—by the legislatures, both at the Federal and State level—and that is that a study, if it finds pay inequities, somehow commits the Congress to proceeding with that study or face a lawsuit.

With the committee's permission, before I deal with the issue I came prepared to talk about, I would like to comment very briefly on a few of the points made by the previous witness, Mrs. Schlafly, because I think it does bear on the Wisconsin experience and goes to the issue of what kind of study the Federal Government might want to embark on.

She talks first about rigging the results, of having a committee in charge. This charge has been made against the Wisconsin committee, although I would point out that our task force is the leading opponent of the legislation, as well as three business representatives.

It seems to me that it is important.

Senator EVANS. I'm sorry. Did you say the task force's leading opponents?

Ms. CLAUSS. On our task force we have as a member the leading opponent of the legislation.

Senator EVANS. I see.

Ms. CLAUSS. As well as the legislator, who is the leading proponent. We have both labor and management, an equal number of labor and management.

I think it is important for people to understand that the job evaluations themselves—the economic analysis, the job point evaluations—are made by experts, not by this committee, either at the Federal level, as proposed, or at the State levels, but by the consultant that has been hired, and that they do that in close consultation with the personnel department that has already been established.

Here it would be OPM; at the State level, at the various personnel administrations. I don't know of any study that was not done in close conjunction with the personnel department, and, in fact, no study could succeed, in fact, to the conclusion if you didn't have the full support and cooperation of the personnel administration.

So you have a job evaluation system and not economic analysis being prepared and not by the committee members, the commissars, whatever you want to call them, but by the experts. The function of the committee is simply to act as a catalyst to keep the process going and to bring to the consultants the concerns that are being expressed by both labor and management and personnel officials.

The other comment that I heard repeatedly, and I certainly meant to address, was this notion that the State task forces that are moving in the direction of eliminating pay equity and comparable worth, or however you want to call it, are proposing that men, particularly blue-collar men, are being overpaid. I don't know anyone, except perhaps a few opponents to this legislation, that suggests that male workers are being overpaid. The thrust of the argument is that women were not paid equal pay for equal work, not that male wages should be reduced, but that women's wages should be raised to the male level. That is the same argument that is being made here, the concern that we are not looking at what work is being done, but that our decisions on salary were, in fact, influenced by sex and race, and that is the bias that should be taken out with the goal of raising those wages but not lowering wages of men who presumably are properly paid.

What the Washington study showed, the Willis reference to truck drivers and highway engineers, was not that they were overpaid. What his study showed was that Washington paid its men more wages as they went up in the ranking of the internal pay equity system. So as Washington State gave those men workers more points, men also received more wages with two exceptions:

highway engineers and truck drivers, which Willis supposed were affected by other institutional factors, such as unionization and market demands, which, of course, no pay system that I know of precludes the use of.

In fact, in our current civil service system, as you know, when it is impossible to hire people at the job evaluated rate as, for example, it was with Occupational Safety and Health inspectors, you then go to OPM and get permission to hire them at the 9th step or 10th step or whatever is required to bring them onto the work force.

If you do a complete new job evaluation, as we did in Wisconsin, to adopt an entirely new instrument, it is true that you will find wage anomalies affecting people other than those who work in female- or race-dominated jobs. Anytime you move from one job evaluation system to another job evaluation system, it is updated and more modern, you are going to have some changes. In fact, I think we would have to concede that in any personnel system, there is a sort of built-in reluctance to change, so that jobs which had their rates established in 1920—and there may be lots of changes in those jobs—but they are still being paid based on the ranking that they had in 1920.

The statement was made that in Wisconsin, you are saying that all men who have been point rated at higher than their current wage continue to receive the low wage. What we have said is that as a task force, we were changed with correcting the pay inequities resulting from sex and race. If there are men who are being paid unfairly, we don't condone it. It just was outside of our jurisdiction to deal with.

We have, however, pointed out to the legislature that with the adoption of our new job evaluation system, the State personnel people have the current leading authority to do position reclassifications for those men who were paid either over the line or under the line, and that you look to see whether there are factors other than the rates which justify those pay disparities, and if not, they then are adjusted. Presumably, if the civil service system is adopted, a whole new job instrument, they will proceed in the same way.

Let me, with these few comments, then, turn to the question I was asked to address, and that is, the concern that a study would somehow prejudge this issue. I find it a very disturbing notion when we talk about fairness and internal wage equity.

I would like Senator Evans' reference to that notion. I think we are striving for something that labor wants and that management wants, because it promotes good morality. You want your best people to be motivated to take the higher demanding jobs, so you want them to receive more pay as they move up in skill level and responsibility.

I think it would be most unfortunate to take this policy that we all want and not look to see if we have a problem, because we are afraid that if we find a job, we can somehow be subjected to lawsuits.

I always point out that this was a major issue before the Wisconsin Legislature. It was the reason that the Illinois Legislature abandoned their efforts at the study, the sphere.

I think the first thing you have to recognize is that the study will not reveal any information that plaintiffs cannot already obtain in private lawsuits.

Senator Stevens talked earlier about the economic analysis and the job content analysis. We already have numerous economic analyses that have been compared by a number of academics, which are referred to in the report. The plaintiffs certainly have access to that information under the discovery rules, and they can do the same job analysis that would be done by a hired consultant.

Second, with respect to the job content analysis, plaintiffs have access to that, too. It is true that they wouldn't have a new job evaluation study prepared for them by the Federal Government, but they would have access to all the position classifications which they could get through discovery and which they could give to job evaluation experts who could then do a traditional job content analysis based on those position descriptions and they also, under the discovery rules, could get access to the workplace to observe the workers do desk audits and make their own job evaluation.

In fact, that is how most private lawsuits have proceeded, particularly underneath the Pay Act. They were not job evaluations in those cases the plaintiffs relied upon. They hired expert job evaluators who went into the plant and did a job evaluation.

So what you are really talking about is money that the plaintiffs might now be able to conceive of bring a lawsuit for a mere $1 million or $2 million cost instead of a $4 million cost. We are still talking tremendous dollars. You are not giving them any information that they can't find on their own.

Along with this, I would point out that the government, in conducting the study, is not creating new information. You are simply taking a photograph of what has already taken place in the work site, and that is something that not only is available to the plaintiffs, as I pointed out, but something that they already know about. They already have that information.

Second, it is not at all clear from the case law. In fact, I would say that the weight of authority would be against the proposition that it is sufficient in making out your case, as the plaintiff, to simply point to a job evaluation study.

The ninth circuit in the *Spaulding* case has rejected that as constituting a prima facie case of discrimination. The district court in Illinois, in the *American Nursing* case, rejected reliance on a study as sufficient by itself to constitute a showing of discrimination.

For that reason, I do not know of any case where the plaintiffs had relied exclusively on a job evaluation study in seeking relief under the title VII of the Civil Rights Act.

In the *State of Washington* case, for example, the study was only one small piece of evidence. I don't even think it would be fair to call it the primary evidence introduced by the plaintiffs. Now, I am not talking about what the judge heard, but in terms of the plaintiff's case, they put on extensive evidence of reverse discrimination. They demonstrated that the State had previously been overtly discriminating in job advertisements. They had testimony from personnel managers that they would never hire women for certain positions. For example, "We would never hire women to work in the

State liquor stores because women fight with each other; they can't get along with customers," various explanations of that type.

There were clear equal pay violations, and there was a clear showing of disparate treatments in the State indexed jobs to the benchmark positions which establish salary. The State of Washington, like the Federal Government, selected just a handful of jobs which they then compared to the private sector in setting wage rates. They then indexed the other occupations that were not looked at in the private sector to one of these benchmarks. They did the benchmarking not by job value or by the relationship of the job to another job, but where it came in the internal ranking.

So, for example, barbers were indexed to security guards. They were male. Beauticians, who did almost identical work, were indexed to secretaries, no disparate treatment of the indexing system. Fish wardens who were all female were indexed to a female clerical position, and game wardens, who were male, were indexed to the male positions.

So there was substantial other evidence of discrimination.

However, this was not a case, as Mrs. Schlafly suggested, where there was simply a study that had not been adopted by a State. As you pointed out, Senator Evans, if a State did have an implementation plan, and it was then banned by the Government, that is very different from the situation we had in Illinois, where a plan was submitted to the State but in no way adopted.

Obviously, if Congress receives a plan from a consultant which they think is faulty or poorly done, they are under no obligation to adopt that plan as a basis for revamping the entire civil service evaluation system.

Nonetheless, despite these general observations, there remains considerable concern about the legal effect of a study, and I have heard various proposals which could satisfy that concern. One of them is that the Congress might add language to any legislation which would remove jurisdiction from the Federal courts over equal pay title VII violations. I, of course, would strongly urge that no such amendment be offered or adopted.

It has been my experience in looking at the various States' studies that almost all of them, as any intensive wage analysis would do, reveal some blatant equal pay violations. It would seem ironic that legislation which is designed to promote fairness in pay would then become a vehicle for excusing flagrant violations that have been outlawed now for 20 years.

Second, I think we all agree that the Federal Government should be the model employer, and it certainly would not be setting the proper example for the private sector to ask for this kind of relief while conducting a study.

An alternative that I have heard mentioned is the solution that Minnesota adopted in extending their law to other local governments, where the job evaluation data will be treated as private data and could not be used by private parties or in court for 3 years.

I am sure that language was added as a political necessity in order to get the legislation through. The language was put in, and it certainly is considerably less offensive than the first proposal.

I think, however, that it really won't help protect the Government if, in fact, the study shows problems of discrimination. I am not just talking about pay disparities, but discrimination.

Once people know there are those problems, they are going to get their own evidence to substantiate the violations.

Certainly, we wouldn't want at the Federal level, to have the job evaluation done in secret. I think it is terribly important to any possible potential change in the civil service evaluation system which has been with us so long that it get full scrutiny by the public and be fully aired in public debate and critiqued.

So I assume the information would be made public. The only restriction would be on its use in court. I don't think that restriction is going to protect the Government, since the information can be obtained independently. I think for that reason it would behoove the Government to follow the Minnesota example.

Let me say that in all these States that have conducted studies where they have proceeded with remedial legislation, the pending lawsuits have never been pursued. Wisconsin was sued in 1981. Nothing has ever been done with that lawsuit. Minnesota will never be sued as a result of its study. The only suits we have seen are in States where promises were made, hope was engendered, and the State then walked away from the problem. That is the point at which people file suit.

These lawsuits are terribly expensive, literally millions of dollars. It just is not realistic to think that employees who receive a new plan which they feel is more fair are going to sue and spend that kind of money. It is the employees who have sought relief and not gotten it that are going to resort to the poor system, particularly when the case law is as unsettled and uncertain as it is.

I would recommend to the committee rather than the Minnesota approach or the notion of removing Federal jurisdiction over equal pay in title VII violations affecting the Federal sector, that you think in terms of how you establish your goals for the study. I think the GAO's recommendations on that point were excellent. They matched our experience in Wisconsin.

We started off with legislation that directed us to look at what was called comparable worth, and we were directed to look at pay inequities based on sex and race. In doing our economic analysis and job content analysis, however, we did not make any findings or discrimination, nor did we feel that we were charged with that responsibility.

We did not look for any evidence of intentional discrimination. We limited our study to doing regression analyses, adjusting for human capital factors to find if, in fact, there was a differential which could not be explained, difference in hours worked, as we had in Mrs. Schlafly's example. Then with the job content analysis, we adjusted for differences in skill effort responsibility, using, again, professional analysis.

So we have made no effort to label any of the States' practices as discriminatory. We did not suggest that it had any discriminatory intent.

I might point out that one problem we then faced was in trying to get the legislation through the State assembly. The argument was made if there is no discrimination, why should the taxpayer of the State be forced to pay this additional money? Since no test was made, that I know of, suggesting the solution of Mrs. Schlafly, that you lower the men to pay for raising the women, you are talking about an added dollar, an added tax component to the payroll.

Most of the States which have completed their studies find that the added cost is going to be somewhere between 2 and 4 percent of total payroll costs.

That being so, if you go to the legislature saying there are these inequities, these disparities, we don't know that they are due to discrimination, to any other socially undesirable factor, but we would like the money to correct them. We found that very helpful to settle. It seems to me that if we found consistent systemic disparities between occupations dominated by a particular race, we would know that was discrimination.

It seems just as logical to me that we find those disparities for sex. We should suspect, at least suspect discrimination and not be afraid to use that word. Having said that, however, in the State of Wisconsin, we were very careful to make it clear to the legislature that we had found and looked for no evidence of discrimination. We simply had done a job analysis and job content analysis without going beyond that.

Second, in our study, because it was a comparable worth study, we made, as I said earlier, no suggestion to correct pay inequities that affected men since those pay inequities, whatever they were based on, were not based on sex or race and did not violate title VII.

I, myself, would prefer if you adopt a new job evaluation system for the Federal Government, that it recorrect all wage anomolies which cannot be justified by other factors. Having said that, you should know, it would cost more money. That, of course, was the dilemma that both Minnesota had and that we had in the State of Wisconsin, that we had started on a program that we estimated would cost somewhere between $30, $40, $50 million dollars. If you then decided to correct the entire system, it would cost considerably more than that.

Another alternative that was suggested by the Governor is that you not use an outside study and that you don't have implementing legislation, but just direct OPM, as it currently has the authority to do, to revise its job evaluation system. There were times during our political debate in Wisconsin that I wished we had done that, because at the conclusion of our first year as a task force, we had such strong support from the personnel administration that we could easily have persuaded them to put into place an unbiased new job evaluation system.

But I hasten to point out that when we started we did not have that kind of support from our personnel system.

Nor did the State of Iowa. Everybody is in love with the system that they have grown up with and that they use. To ask a personnel administration that has used the same system for 30 years and has all their people trained in it to look at it critically, I think, is asking a great deal. We found that by having the outside consultant who could push our personnel people in the beginning, that that was very disarming.

As it turned out, as the study went on; the personnel administration really began to take hold of the study themselves and were substantially involved in the final writing of the manuals and the job evaluation questionnaires.

But I do think that you lose the outside objectivity that you get by using a committee and a hired consultant.

I think I would conclude at that point, Senator. I would be happy to answer any questions.

Senator EVANS [presiding]. Thank you very much, Professor.

I understand correctly, I think, that the study conducted was a study aimed at setting internal alignments.

Ms. CLAUSS. Correct.

Senator EVANS. And that the response to the marketplace both is in the overall levels of each of the jobs which are set plus the ability, even under a job evaluation scheme such as was adopted, to hire at a higher step than the average in any kind of a pay grade in order to respond to market needs; is that correct?

Ms. CLAUSS. That is correct.

Senator EVANS. As long as that is done without any ambitious discrimination the way that is handled, that would clearly be within the jurisdiction of anyone?

Ms. CLAUSS. Absolutely. And employees are doing that right now.

The only market factor that I would say is impermissible is the factor of sex, and as the Supreme Court has said in *Cornia Glass* and as the fourth circuit said in the *Grayhoff* case, that you can't take advantage of the fact that women and blacks, because of economic necessity, are willing to work for less. But other than that one factor, any other reference to the market is certainly legitimate.

Senator EVANS. In your view, is the suggestion of some that a job evaluation scheme ignores the marketplace simply inappropriate or inaccurate?

Ms. CLAUSS. Inaccurate in two respects, Senator. First, the one you have mentioned, that large employees like the United States and GM do not set each wage individually by looking at the market. They have their internal ranking and then use benchmark jobs and set it that way as the Government now does; and second, inaccurate in that it suggests that public sector does not add just for market when it has to. There are numerous examples of this.

Senator EVANS. There has been a lot of talk about objectivity and subjectivity of various schemes with the claim of many opponents that the marketplace in its perfection is thoroughly objective and that any job evaluation system seems to be subjective. Is the current way we establish salaries in the public sector under that definition totally objective? You mentioned benchmarking, for instance. The technical ways in which benchmarking is done in either State or Federal level, is that an objective analysis?

Ms. CLAUSS. I don't know any objective way to set salaries. I defy anyone to suggest one. I was struck by our graduating class this year that the going rate for lawyers, the market rate for new lawyers in the top 10 percent of the class branched from $16,500 if you worked for the public defender to $43,000 if you went to Wall Street.

So what is the market rate for the entry level lawyer? It depends on the industry you work in. It depends on the location. It depends on all kinds of factors.

The public sector has never looked exclusively to the private sector to establish wage rates. For example, the range in wages in the public sector is much more compressed than it is in the private sector because of our belief that public servants shouldn't be on the dole and also public servants at the upper level shouldn't earn 10 times more than the average citizen earns.

So you have a great compression. Usually people at the unskilled levels are paid more than in an average private marketplace and people at the upper skilled levels are paid less. If you just look at the public sector, there is consistency to the pay system. I appeared before a group before the American Compensation Committee in New York recently. Someone asked wasn't the president underpaid that he should get an amount so low in relation to ballplayers. If you look at the industry in which he works, the public sector, he, of course, is the highest paid and he has the most demanding job, and I think people would say he should be the highest paid in the public sector.

Senator EVANS. I guess if you were a Federal ballplayer, the question is, can he switch hit. Can he hit 350 and that might set his pay?

I must say, I was particularly attracted to the first study done in Washington, done on executive salary alignments when the results came back showing that the Governor was the most underpaid person in the State.

Ms. CLAUSS. I'm sure.

Senator EVANS. Understandably, I thought that was a splendid result. Incidentally, it was never carried out.

Ms. CLAUSS. The question ought to be: "Do you have an instrument that reliably predicts wages regardless of who applied the instrument?" Using that test for our new job evaluation system in Wisconsin, we find that regardless of which evaluation team you give it to, that they come up with the same points within a test of validity of 96 percent. That is just extraordinarily high.

Senator EVANS. In conducting that study, did you consistently do that, have different teams conducting analysis of the same job?

Ms. CLAUSS. Oh, yes.

Senator EVANS. With how many teams?

Ms. CLAUSS. It would be the technique where we found out which factors were over salary. So if you were given a job description without knowing what that job was paying, you could take the wage the States has accorded to the various job characteristics and predict that salary and be right. Then we simply took that salary setting system, which would reflect market force, as the State has been practicing over the years, and we applied it to the female-dominated jobs.

Senator EVANS. Do I understand correctly that the study in its entirety has already been accomplished, or is it still being processed?

Ms. CLAUSS. No. We adopted the legislation before the final study was completed.

Senator EVANS. So the legislation, in essence, commits the State to carrying out the results of the study; is that it?

Ms. CLAUSS. It commits the State to the policy.

Senator EVANS. But not the specifics, necessarily?

Ms. CLAUSS. But not to the specifics.

The second step is that when our study is completed in October, we have to submit to one of our legislative committees, a committee on employee relations, our recommendations based on the new job evaluation system that has been adopted, our recommendations for which pay range each occupation should be slotted into. They then have to approve that.

Senator EVANS. That would only be approved by the committee?

Ms. CLAUSS. Just by the committee.

Senator EVANS. The legislature has given the committee that authority?

Ms. CLAUSS. The legislature has given the committee that authority. Once they approve those salary slottings, and, of course, there could be some give and take on that, implementation under the legislation begins to take place on July 1, 1986.

Senator EVANS. So that would take place on July 1, 1986, but there would be a preceding legislative session to fund whatever requirements?

Ms. CLAUSS. No; the initial funding was accomplished in this legislation. Nine million one hundred thousand dollars has been setaside. But the recommendation of the task force and the intention of the legislature at this date is to fund over a period of years, much as the State of Washington planned to do. So we did not ask for or receive all the funding.

Senator EVANS. What was the approximate vote in the two Houses on the legislation just passed?

Ms. CLAUSS. I'm sorry. I don't know it.

Senator EVANS. Was it a close vote?

Ms. CLAUSS. It was a close—well, the State of Wisconsin is a little misleading, because it would have been a very close vote on this particular legislation that was enacted, but our Governor has line veto power to set it over. Our senate was strongly in favor of the legislation. It was fairly close in the assembly. I think it only passed the assembly with as comfortable a margin as it did, because the assembly made substantial changes which the Governor then vetoed.

They had no possibility of overriding because they would need a two-thirds vote. So the legislation has passed. I would have to say it might not have passed in assembly in the form it now stands in.

Senator EVANS. What were those essential differences adopted by the assembly and then vetoed?

Ms. CLAUSS. You will be very familiar with them based on your Washington experience. One would be: What would be the compliance wage line? The task force recommended that using policy capturing techniques, that we use jobs which were neither male nor female to set the wage rate for the female jobs, because those jobs will go lower than the male-dominated jobs, were not affected by sex.

We suspected that many of the male-dominated jobs had other institutional characteristics that explained their higher rates. We had a rule, much as you do, with blue-collar workers that trades people get the prevailing rate in the community and things of that type we thought skewed their wages.

The assembly really didn't understand that. They thought we were going to a male. So they averaged all three lines and made that the compliance line. Of course, that compliance line was lower than both the male line and the traditionally female job line, which means you had a new female line, which would have cured any potential discrimination problem. That was the Governor's first veto.

The second veto was the assembly had directed all men below the line be raised to the line, the point that Ms. Schlafly made. That was vetoed not because the Governor wasn't sympathetic to it, but because it went beyond the intent of comparable worth since their lower wages were not based on sex, and he directed the personnel administration to deal with that on a position classification basis.

The third amendment was to red circle all the wages of people over the line, and since they had lowered the line, that would have been 55 percent of the work force. Those people would have received no further increases. That, of course, I think, affects the principle of correcting for prior discrimination. If you are willing to pay men *x* amount for those job characteristics, you should be willing to pay women and blacks *x* amount for those job characteristics. So the Governor vetoed that.

Senator EVANS. Don't you think, however, that in any kind of a final analysis, it is conceivable if you are really measuring the worth of one job to another, that some jobs may well be worth the same?

Ms. CLAUSS. Absolutely.

Senator EVANS. Is there any reason why you shouldn't freeze those?

Ms. CLAUSS. Absolutely not. We just don't know which those are. The Department of Administration has been directed to look at all jobs to determine whether they are paid more because of historic anomolies that no longer exist; they are plain just misclassified, which means they should be red circled; or whether it is due to institutional characteristics that still pertain.

Senator EVANS. Thank you very much.

Any further written testimony you would like to present would be very helpful. The record will be kept open for 2 weeks. Within that period of time, if you have any further written testimony, it will be welcome.

Ms. CLAUSS. Thank you. Thank you, Senator.

Senator EVANS. Thank you very much. That is the last witness for today, and this committee hearing is adjourned.

[Whereupon, at 12:25 p.m., the subcommittee was recessed, subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

TESTIMONY OF THE AMERICAN RETAIL FEDERATION

Before the Subcommittee on
Civil Service, Post Office and General Services
of the
Governmental Affairs Committee
United States Senate

Hearings on General Accounting Office Report
"Options for Conducting a Pay Equity Study of
Federal Pay Equity and Compensation Systems"

Submitted by:

Cathie A. Shattuck

June 7, 1985

Mr. Chairman, I am Cathie A. Shattuck,[1] an attorney with the law firm of Epstein Becker Borsody & Green, and I submit this testimony on the GAO report and other "pay equity" matters on behalf of the American Retail Federation. The American Retail Federation, which is 50 years old this year, represents 50 state retail associations and 30 national retail trade line associations which are located in various states throughout this country. Through these associations and its corporate members it represents over one million establishments which employ 12 million retail employees. The American Retail Federation is an organization comprised of retail firms operating full line department stores, specialty stores, variety stores, grocery stores, drug stores, jewelry stores, and furniture stores. Among its members are those who are union and those who are non-union employers. The membership includes large, national employers and small companies with just one or only a few retail stores.

The American Retail Federation and its members embrace the concept of equal opportunity in all aspects of employment, including compensation. Its members are dedicated to creating and maintaining opportunity for all qualified persons, regardless of sex, to obtain highly compensated positions. In beginning my testimony I would like to make it very clear that the American Retail Federation and I, personally, believe, as part of our basic system of moral and social values, that discrimination on the basis of sex, race, ethnicity, age or handicap is not only unlawful, it is wrong. We are committed to the elimination of such discrimination in the workplace and will continue in our endeavors to assure that equal employment opportunity is a reality and not a platitude. We make this statement because we firmly believe that the current laws, i.e., Title VII of the 1964 Civil Rights Act and the Equal Pay Act, already provide the means by which equal employment opportunity may be achieved and because we do not believe the emotional, sexual and racial blackmail used by proponents of pay equity, whether intentional or not, serves this Committee and the Congress in its deliberations of national wage policy questions. Business and labor are equally committed to the elimination of discrimination through a total integration of employment opportunity in this country. The real question to be determined by this Committee and Congress is whether or not wages in the federal government should be set by the marketplace as defined by the economic needs and aspirations of the government and the skills and aspirations of the federal worker, or should it be based on sociological and social science concepts mandated by the federal government as interpreted by social scientists, industrial psychologists, consultants, and the courts.

---

[1] See Attached biographical sketch.

In order to focus on this question it is important to understand what the term "marketplace" means because its definition in terms of wage setting goes far beyond how prices are set for goods and services to include the "labor marketplace," i.e., the availability of persons with discrete skills, education, training and ability to perform specific jobs. It must also be understood that the terms "marketplace" and "labor marketplace" have been greatly influenced in the past twenty years by the changes in the world economy from an economy in which United States' goods and services dominated its own domestic market and foreign markets to a highly competitive global economy in which labor costs must be off-set by productivity if U.S. business is to compete in both domestic and foreign markets.

JOB EVALUATIONS

The concept of using job evaluation techniques is certainly not a new one to American employers. Employers, including the federal government, define jobs by the tasks which the persons holding those jobs would be expected to perform. In defining the ability of individuals to perform those tasks, employers, to either a greater or lesser degree, determine that certain factors such as education, training, skills, experience, effort, responsibility and working conditions may be among those factors which play a role in determining whether or not an individual is qualified for a position. The legal standards imposed by Title VII of the Civil Rights Act of 1964 already prohibit the use of discriminatory job requirements insofar as those requirements are not job related or based on business necessity. For example, employers in this country understand that they may not require a high school education for an entry level position unless they can prove that such educational achievement is in fact necessary to perform the tasks of the job for which they are hiring. This principle has been successfully used both by the federal government and private litigants to overcome incidents of racial discrimination in employment. The federal government and private litigants have also used this standard to eradicate practices of sex discrimination and national origin discrimination in cases involving height, weight and strength requirements imposed by employers for certain jobs. In case after case the federal courts have determined that barriers to the employment of protected groups, i.e., women and minorities, are unlawful absent showing of proof by the employer that the job requirements are job related. The principle of job relatedness is one that is fairly easy to understand and employers for the most part do not have any difficulty in implementing it.

With respect to compensation or pay, federal law as it now stands is also very clear. Title VII prohibits discrimination on the basis of sex, race, religion, creed, color and national origin with respect to compensation. The Equal Pay Act provides that an employer may not discriminate on the basis of sex among persons performing substantially equal work, unless such paid differentials are based on seniority, merit, quantity or quality production, or any factor other than sex. 29 U.S.C. 206(d)(1). It should also be remembered that current law does not require an employer to rely exclusively on an analysis of the "education, training, skills, effort, responsibility, and working conditions" involved in a particular job, to the exclusion of other factors such as labor supply or demand, seniority, merit and any other factor other than sex. Rather, the laws provide for the critical principle that an employer may not base a pay decision or practice solely on the basis of sex.

How then does the study contemplated by the GAO Report depart from the principles of equal employment opportunity established by Congress through Title VII and the Equal Pay Act as interpreted by the courts? The proposed study is based on two assumptions. The first assumption is that because the average earnings of full-time female workers is lower than the average earnings of similarly situated male workers, that difference in pay is the result of federal wage setting practices based on the sex of employees rather than any intrinsic differences in the work of the jobs involved as measured by education, training, skills, experience, efforts, responsibility or work conditions required for the job. The second assumption is that objective job evaluation techniques now exist which may be used to determine the comparative value of different jobs through a system which numerically rates the basic features and requirements of a particular job. Such a system excludes any outside or non-task related factors, such as availability of workers with certain skills, the demand for certain skills or abilities, the performance of these skills by individuals in the workplace (merit), the quality or quantity of production of individual workers in the work place (experience), rewards for length of employment (either in a union or non-union setting), the necessity of retaining highly skilled workers when a scarcity of such workers exists in the job market and competitive pricing considerations in determining the amount which may be expended for labor costs.

GAO RECOMMENDATIONS

In a report by the Comptroller General of the United States entitled "Options for Conducting a Pay Equity Study of Federal Pay Equity and Classification Systems," March 1, 1985, the General Accounting Office (GAO) made it clear from the outset that what is not clear is why the wage gap exists and whether discrimination plays a part of the gap (page i). The GAO also recognized that job evaluations are inherently subjective (page 30) and it further recognized that market factors pay a role in most evaluation systems (page 27). It should also be noted that the GAO report does not answer the question as to what would be the proper compensation system for the federal government to use or even whether or not the job evaluation and wage determination process used by the federal government at this time is unfair or unlawfully discriminatory. Most important, however, is the GAO's recognition that a new definition of discrimination lies within the comparable value controversy. The GAO distanced itself from the idea of such a study being in any way related to sex-based wage discrimination (page 10). In addition, the GAO recognized that there may be certain legal consequences from conducting a study on pay equity for informal purposes, as the results of such a study may in fact bind the government to the results (page 24).

With respect to federal employees, we sincerely hope it is not the intention of Congress to establish a system of pay raises, which would not take into account meritorious work performed by federal employees, seniority, or wage rates and benefits negotiated pursuant to collective bargaining. If a federal system of compensation and benefits does not include some incentives to federal employees and/or a system of rewards for longevity of service or meritorious performance, the Congress should consider some alternative means of encouraging excellence of performance on the part of employees and continued and federal employment. One means by which this could be effected would be to set wage rates at a level higher than the marketplace in order to discourage federal employees from seeking private employment, and to encourage persons entering the marketplace to seek employment with the federal government. Such a rate of pay would have an adverse impact on private employers who also need to hire talented workers and unfortunately, there are no studies which show a correlation between high average rates of pay and a high average rate of performance on the job. In fact, it has been the experience of employers for many years that the failure to provide the means of individual recognition by some system of rewards will, over time, result in the development of an average standard of performance by employees, and those with outstanding abilities and ambitions will move on to other employers in order to work in an environment where their individual abilities and efforts are rewarded on an individual basis.

CONCLUSION

It is my experience that sex-based discrimination in employment is not merely a question of compensation. If the federal laws mandating equal employment opportunity were being strictly adhered to, then the question of female dominated classes and male dominated classes would not arise. There would be a totally integrated federal workforce with men and women, subject to personal choice, working in every job category. There would also be an aggressive program of recruitment and training available for both women and men for all job classifications with non-discriminatory standards for the selection and promotion of employees. In addition, the federal government would work with high schools, colleges and training schools throughout the country to ensure that both men and women receive training and counseling which would encourage them to apply for all the jobs available in the public sector. Such a program would go a long way in creating a workforce of both males and females qualified to occupy all positions in the labor marketplace. It is erroneous to assume that, absent such measures, the mere raising of women's salaries would establish an equitable system of compensation if the equitable system is defined as one in which female dominated and male dominated classes receive the same salary. In fact, such legislation if applied to the public sector may have the effect of solidifying the status quo by lessening the drive on the part of hiring officials to hire women into so-called "men's jobs". The true consequences of such legislation would be to remove the "stick" from the "carrot and stick" approach which underlies both Title VII and Equal Pay Act. If discrimination is defined as disparities in salaries between men and women in a general sense, and if those disparities are eliminated by legislative mandate, no matter how subjective or unfair that mandate may be, then the federal executive need no longer fear the liabilities which may arise from failure to continue in its efforts to fully integrate the workforce and to assure equality of opportunity in employment with respect to compensation under Title VII of the Civil Rights Act of 1964 and the Equal Pay Act. This is not to say that Congress should not be concerned with whether or not the wages paid to federal employees are lawful; however, proposed solutions should not be based on the false premise that because women earn an average less than men, such differential is the result of unlawful discrimination. To base wages on a system of comparable values would not eliminate discrimination.

ATTACHMENT

Cathie A. Shattuck has practiced as an attorney in the field of equal employment for the past 15 years. She began her career as an attorney for the Colorado Civil Rights Commission where she represented the State of Colorado in cases of discrimination on behalf of individuals and groups who alleged they suffered employment discrimination on the basis of race, religion, creed, color, national origin and sex, including compensation. Ms. Shattuck served as a trial attorney in the Denver Regional Office of the U.S. Equal Employment Opportunity Commission for several years, also trying cases of a similar nature. When she left the government, she practiced as a private attorney representing both plaintiffs and defendants in equal employment matters, including compensation and equal pay, and as a Special Hearing Officer to the Colorado Department of Administration for cases involving personnel and compensation appeals. In 1981, Ms. Shattuck was named a Commissioner of the U.S. Equal Employment Opportunity Commission and, subsequent to her confirmation by the United States Senate, she was named Vice-Chairman of that Commission. The Equal Employment Opportunity Commission is charged with the federal enforcement of Title VII, which prohibits discrimination on the basis of race, religion, creed, color, sex and national origin, including compensation, as well as the Equal Pay Act. Ms. Shattuck served as Commissioner and Vice-Chairman of the Commission until April of 1984, when she returned to private practice in Los Angeles, California. Currently, she is a partner in the national law firm of Epstein Becker Borsody & Green and specializes in equal employment litigation, including matters concerning affirmative action, compensation and equal pay.

Cathie A. Shattuck
Epstein Becker Borsody & Green
1875 Century Park East
Suite 1600
Los Angeles, California 90067
(213) 556-8861

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
ON S. 519, CONCERNING "COMPARABLE WORTH"
TO THE GOVERNMENTAL AFFAIRS COMMITTEE
UNITED STATES SENATE

June 7, 1985

The American Farm Bureau Federation is an organization of more than 3.3 million member families in 48 states and Puerto Rico who are members of 2,762 county Farm Bureaus and who finance the organization through voluntary annual payment of dues.

As the nation's largest general farm organization, representing three-fourths of the commercial farms and ranches in this country, Farm Bureau has an interest in any proposed legislation that would increase the cost of government or adversely impact employers.

According to the U.S. Department of Labor, some 900,000 farmers and ranchers in this country are employers of non-family labor. They constitute one of the largest groups of employers in the country and provide two million jobs. More than half of the agricultural employers hire fewer than five people; but a significant number of them employ from five to fifty people, and an estimated 100,000 employ more than fifty. Agricultural employers are subject to most of the federal laws that regulate employment, including laws that prohibit gender discrimination.

We understand the Committee is currently giving consideration to S. 519, which is aimed at employment practices of the federal government. We also note that S. 5 would extend the concept of comparable worth to the private sector.

We are not aware of any charges of sex discrimination in employment on farms. Most agricultural employers find it difficult to recruit and maintain a sufficient number of workers to fill their needs, particularly for seasonal employment. They cannot afford the luxury of discriminatory practices, whether based on gender, race, national origin, or any other such factor. More males are employed on farms than females; but we do not believe that any barriers exist against the employment of females for any of the wide range of jobs that are available.

It is true that certain jobs are dominated by males and others by females. It is also true that the "gender gap" in wages does exist; but we are not convinced that such disparities result from any deliberate discrimination against females.

Farm Bureau is opposed to both S. 519 and S. 5. While S. 519 is ostensibly confined to a study to identify any discriminatory wage-setting practices and discriminatory wage differentials within the federal government's position-classification system, we believe enactment of the bill would be the first step in the implementation of comparable worth within the federal civil services and would have far-reaching implications for the private sector.

We agree with the findings of the Civil Rights Commission that the concept of comparable worth should be rejected outright. It is difficult for us to imagine that at this juncture in our national history a majority of the members of the Senate would seriously consider the idea of giving anyone in government the authority to decide what the wages should be for thousands of job positions.

The idea that any government agency or any judge is in a better position to determine the worth of jobs than now provided by the marketplace is an anathema to us. The American people have made it plain in recent elections that they want the role of the central government diminished, not enhanced. Comparable worth is an issue that clearly separates those who believe in limited government and greater reliance on individual decisions made in response to the forces of the market and those who would place greater reliance on the collective wisdom of politicians, civil servants or judges. We have long believed such collective wisdom to be limited at best.

Specifically, we are opposed to this legislation for the following reasons:

1. We reject the basic concept of comparable worth as it has been defined by its proponents.

2. We believe this legislation could lead to an attack on private enterprise if extended to the private sector.

3. It is clear, based on the court decision in the State of Washington and the estimates which have been made as to the cost of the decision to the taxpayers of that state, that should a similar series of events take place as a result of the study mandated by S. 519, the cost to federal taxpayers would run into several billion dollars. The result would be an enormous increase in the already scandalous deficit or an increase in taxes, neither of which is acceptable to us.

   Proponents of the bill have promised that no federal employee would experience a pay cut as a result of any change in the job evaluation and wage structure of the federal government; but that is not possible if some jobs are determined to be worth more, unless the total amount of money available for wages is increased.

   We fail to understand that when comparable worth is envoked in the name of equity, the salary for the lower-paid job is always increased to the higher-paid job. Doing the reverse would be just as logical. Of course, if this were done, the comparable worth concept would fall into disfavor very quickly.

4. The Equal Pay Act and Title VII of the Civil Rights Act already clearly prohibit gender-based discrimination in employment in this country. Additional laws are not required.

5. Despite the innocuous appearance of a "pay equity" study which would result from the enactment of S. 519, it was found in Washington State that such a study resulted in a decision by a federal district court that unless the State of Washington acted upon the recommendations in the study report, it was guilty of gender-based discrimination.

6. Agricultural employers have enough difficulty in coping with the current federal and state laws that regulate employment without contemplating the possibility that at some point in future some agency of the government would be empowered to make determinations as to the comparable worth of various jobs on the farm, based on someone's subjective opinion as to what weight should be assigned to various factors in a job evaluation.

7. We have full confidence in the classification and compensation system now being administered by the Office of Personnel Management, and see no need for a study commission.

We urge the members of the Committee to reject this legislation.

STATEMENT BY

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

TO

THE SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE
AND GENERAL SERVICES
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS
OF THE UNITED STATES SENATE

ON

COMPARABLE WORTH

AGC is:

- More than 32,000 firms, including 8,400 of America's leading general construction contractors, responsible for the employment of more than 3,400,000 individuals; and
- 110 chapters nationwide.

AGC members complete:

- More than 80% of America's contract construction of commercial buildings, highways, industrial facilities and municipal utilities; and
- More than $100 billion in annual construction volume.

August 7, 1985

The Associated General Contractors of America (AGC) and its 110 chapters speak for more than 32,000 firms, including 8,400 of America's leading general contracting companies which are responsible for the employment of more than 3,400,000 individuals. These members perform more than 80 percent of America's contract construction of commercial buildings, highways, industrial and municipal utility facilities. AGC's members include both collective bargaining and open shop firms.

The Associated General Contractors opposes comparable worth because it would drastically interfere with freely functioning labor markets. Comparable worth would require the government or some other quasi-public bureaucracy to control the wages paid for different occupations, and to base wages on subjective criteria of what is "equal," without regard to market factors.

AGC believes that the government has already taken the steps necessary to eliminate sex discrimination in job placement and compensation. The Civil Rights Act of 1964 prohibits sex discrimination in almost any aspect of employment, and the Equal Pay Act specifically requires equal pay, between men and women, for all substantially equal work.

While the labor market forces may not be free of imperfections, comparable worth would address far more than labor market imperfections. Comparable worth would put the goverment or some other, quasi-public bureaucracy at the center of all wage determinations. Comparable worth would not merely regulate labor market forces; comparable worth would displace them. Comparable worth directly implies some kind of bureaucratic control over the essential functions which labor market forces perform: setting relative wages, and in the process, allocating labor among occupations. Comparable worth also directly implies the same kind of control over collective bargaining.

Comparable worth proceeds from two erroneous premises. The first is that occupations have an intrinsic value, without regard to labor supply or demand. The second is that one can objectively measure this value.

AGC believes that the only way to verify the value of an occupation is to see what the market will pay an individual to fill it. As Dr. June O'Neill, Program Director for the Urban Institute's Program of Policy Research on Women and Families has recently written:

> In a free market, wages and prices are not taken as independent judgments of the inherent value of the job or the good itself, but reflect a balancing of people's desire for these services and goods (demand), with the relative scarcity of them (supply). Market prices are the efficient

> signals that reflect supply and demand. Thus, we accept and pay a higher price for diamonds than for water, even though water is vital to our survival and diamonds most assuredly are not. If asked what the proper scale of prices should be for such products, most people -- at least those superficially familiar with economics -- would sensibly answer that there is no proper scale. It all depends on the tastes and needs of millions of consumers and the various conditions that determine costs of production and the supplies of the products.
>
> What is true of the product market is equally true of the labor market. For example, among predominantly male occupations, lawyers and engineers receive higher wages than clergymen and bricklayers. Yet the latter are equally worthy in the sense that they are at least as important in our lives. There is simply no independent, scientific way to determine wage rates in these or any other particular occupations without recourse to the market.[1]

AGC believes that the second premise -- that one can objectively measure the instrinsic value of an occupation -- is no less difficult to accept. Job evaluations are subject to different interpretations or misinterpretations. Greatly concerned over the way in which comparable worth would affect collective bargaining, Mr. Jesse Calhoon, the President of the Marine Engineers Beneficial Association, has written:

> Evaluators can "find" any results they want to find or are instructed to find. For example, physical effort is far more often an important factor in male jobs than in female jobs. But comparable worth people know how to deal with this. Their "solution" is to measure the "average" amount of weight lifted each day. In this way, the physical effort of a worker carrying a 100 pound load several times a day would be considered

---

[1] F. Morris, J. O'Neill, J. Calhoun, J. Sloan, S. Mitchell, T. Fahner, Judicial Wage Determination ... A Volatile Spectre, at 27 (1984) (hereinafter cited as "Judicial Wage Determination").

> equal to the physical effort of a secretary who did light lifting (of, for example, a stapler) continually throughout the day. Another job evaluation technique with similar results involves measuring worth [sic] effort (note: not output) through the amount of calories expended in accomplishing job tasks. Consequently, a typist in a hot office expending more calories typing letters than a metal worker in an air conditioned factory would be valued more highly under this technique and would thus be paid more. We would be measuring "grunts and groans" and not actual work completed. The crucial point here is that it's easy to bias job evaluation to get the desired bottom-line results.[2]

The General Accounting Office Report on comparable worth is an excellent summary of the current state of job evaluation techniques,[3] but cannot refute the point that job evaluation remains a matter of art. In fact, the report serves primarily to confirm that a large number of subjective judgments have to be made throughout the course of a job evaluation study.

With regard to the often cited statistic that all women, across all occupations and age groups, earn roughly 60% of what all men earn, AGC believes that this broad statistic obscures more than it reveals. For example, in remarks to the National Conference on Women, the Economy and Public Policy, on June 20, 1984, Dr. Janet Norwood, the Commissioner of Labor Statitics, stated that more detailed comparisons show that the situation is far more complex:

> When these aggregate weekly earnings data are examined further, the median earnings ratios can vary a great deal. Among young workers under age 25, women earned 90% as much as men in 1983, while among those 25 and over, the ratio was lower. In elementary school teaching women earn roughly 87% as much as men on a weekly earnings basis. Among lawyers in the wage and salary category, women's earnings were 88% of men's earnings, and the ratio was 81% among computer programmers.

---

[2] Judicial Wage Determination, supra, at 40.

[3] Comptroller General, Options for Conducting A Pay Equity Study of Federal Pay and Classification Systems (1985).

Turning to the Bureau of Labor Statistics' (BLS) establishment wage survey, Dr. Norwood continued:

> Use of the BLS establishment wage survey data also suggest a narrower female-male gap than the aggregate earnings data do. A recent BLS study based on data from our survey of professional, administrative, technical and clerical occupations concluded that the average pay for men in narrowly defined white-collar occupational skill levels generally exceeded the earnings of their female counterparts, but the difference was much smaller than that found in studies using less detailed data. Moreover, in many of these white-collar occupations, women's earnings were closer to men's when viewed within individual establishments.

Dr. Norwood also discussed many of the potential reasons for the earnings gap, such as differences in work history, education and skills, and noted that "[w]omen tend to work fewer hours and have less seniority than men."

Another recent study, undertaken for the Rand Corporation, notes that the composition of the labor force is constantly changing, and more specifically, that women have been flooding into the labor force in greater and greater numbers over the last sixty years.[4] This flood into entry level positions has resulted in lowering the average wage for all female workers.

Conclusion

Once again, federal legislation already prohibits sex discrimination in almost any aspect of employment, including intentional sex discrimination in pay. As a result, AGC believes that no further legislation is needed.

AGC appreciates the opportunity to present its view that free and open labor markets, and free collective bargaining, hold the greatest promise of equal opportunity for all Americans.

---

[4] The Rand Corporation, Women in Nontraditional Occupations -- Choice and Turnover (1985).

POST-HEARING

STATEMENT

of the

AMERICAN NURSES' ASSOCIATION

on

OPTIONS FOR CONDUCTING A PAY EQUITY STUDY OF FEDERAL PAY AND CLASSIFICATION SYSTEMS

before the

SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE AND GENERAL SERVICES

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

on

JULY 25, 1985

The American Nurses' Association (ANA) would like to commend the GAO for its in-depth analysis approach in designing a Pay Equity Study that should produce a comprehensive analysis of the federal wage system. The ANA is painfully aware that, the higher the concentration of women in an occupation, the lower the wages in relation to the occupation's worth. Registered nurses, over 97 percent of whom are women, have always suffered from this discrimination. Registered nurses exemplify the problems women face in receiving equitable compensation for their work. In fact, to a large extent, registered nurses have become a symbol of the persistent inequities of women who work.

Studies using standard job evaluation procedures have shown that nurses are one of the most underpaid categories in relationship to the demands of the job they perform. The following are a few specific examples substantiating this fact:

- A 1974 study in Denver, Colorado, revealed that nurses earned $316 per month less than sign painters, $111 less than tree trimmers, and $65 less than parking meter repairmen.

- A 1980 study in San Jose, California, rated the skill, effort, and responsibility of a city nurse equal to that of an electrical foreman. The nurse, however, earned $329 less per month than an electrical foreman and $200 less than a senior painter, a position with much lower job evaluation points.

- A 1981 job evaluation study in Minnesota rated registered nurses equal to vocational education field instructors. Yet, the nurses were actually paid $537 less each month than the field instructors.

- A 1983 job evaluation study in Illinois revealed that Nurse III classifications were underpaid by as much as $6,243 annually and Nurse IV classifications by as much as $7,322 annually.

There are over 1.3 million practicing registered nurses for whom the concept of pay equity is a top priority. The American Nurses' Association is committed to achieving pay equity for all working women, and believes that the time for action is now. The working women of this country and indeed the world's most progressive nation can no longer afford to wait to earn an equitable wage while policy makers continue to deny or merely give lip service to the problem. Working women need concret steps taken now to eliminate the inequitable wage gap that exists between men and women.

AMERICAN NURSES' ASSOCIATION AND PAY EQUITY

In 1980, ANA became a founding member of the National Committee on Pay Equity (NCPE), a coalition composed of individuals , labor, womens' and civil rights organizations, and government agencies committed to eliminating pay inequities between men and women. In that same year, ANA testified at the Equal Employment Opportunity Commission's (EEOC) first public hearing on job segregation and wage discrimination, in an effort to document the economically depressed status of nursing as a predominantly female profession.

In December 1983, ANA and the Illinois Nurses' Association filed charges of discrimination with the U.S. Equal Employment Opportunity Commission on behalf of nurses and other women employees of the State of Illinois. The charges, which contend that the state discriminates against women employees in female-dominated job classifications, are based on evidence of historical sex discrimination by the State of Illinois against female state workers, and on a job evaluation study conducted by the state and released in June 1983. The study, which focuses on 12 female-dominated and 12 male-dominated state job classifications, revealed egregious pay discrimination against female state employees. In March 1984, the Department of Justice issued right-to-sue letters giving the Association the right to pursue its charges in court. We refer this Committee to the April 4, 1985 testimony of Barbara Goldsberry, R.N., before the House Post Office and Civil Service Subcommittee on Compensation and Employee benefits for an Illinois nurse's experience with wage discrimination.

Although the district court judge in Illinois dismissed the pay equity class action suit in April 1985, ANA filed an appeal on July 15, 1985. An amicus brief has been filed by NCPE and thirty other national groups. In addition, four other amicus briefs were filed. (See attachment)

The Illinois litigation is a current example of ANA's efforts to secure pay equity for nurses. The Association, however, has a long history of working to secure economic justice for women employees.

In 1981, ANA filed an amicus brief with the Supreme Court in the case of County of Washington v. Gunther, the landmark case which established the principle that pay equity for all male and female jobs, not just those jobs which are identical, is required by the Civil Rights Act of 1964. ANA had previously provided direct financial support to NURSE, Inc. of Denver, a group of public health nurses who sought to prove that their employers were in violation of Title VII of the Civil Rights Act. The Denver nurses, who were city employees, compared their wages with those of sign painters and tree trimmers employed by the city and county. In so doing, they discovered that the mean starting salary of 100 percent female job classes was $500 a month less than that of 100 percent male job classes at comparable value. The lower courts applied the Equal Pay Act of 1963 and ruled against the nurses. Although the Supreme Court refused in 1980 to hear the nurses' appeal, some legal authorities believe the NURSE, Inc. action paved the way for the Gunther decision.

In addition to these national activities, many of ANA's constituent state organizations are involved in state legislative activities. There are currently 45 states which are considering some action on pay equity. Clearly, the states are leading the way in this area.

The Pennsylvania Nurses Association (PNA), on June 7, filed charges with the U.S. Equal Employment Opportunity Commission on behalf of registered nurses and other women employees of the Commonwealth of Pennsylvania. PNA is demanding an official investigation of the state's pay practices and a determination that the state's classification and pay structure illegally discriminates against women workers and men working in women's jobs, in violation of federal and state law.

PNA recently completed a study of the state's pay and classification practices affecting all its women workers. The study, which analyzed information provided by the state, shows that the Commonwealth has established and maintains a sex-segregated work force. Women are concentrated in a small number of lower-paid jobs in the state's work force. They are also concentrated on the lowest paying rungs of the state's occupational career ladders. Women's jobs, such as nursing, are undercompensated relative to men's jobs for the work they actually perform. In sum, according to PNA, "women are discriminately hired into lower paying jobs, denied an equal opportunity for promotion to higher paying jobs, and undercompensated for the work they perform."

A fact sheet compiled by PNA reveals, among other things:

> THE STATE'S WORK FORCE IS RIGIDLY SEX-SEGREGATED.
>
> The State has 2, 574 separate job classifications. 84% of those classifications (2,163 classes) are sex-segregated; they are at least 70% male or female in composition. More than ½ of the State's job classes (1,461 classes) have no women in them at all. The State employs 83,752 people. Over 70% of them -- 58,704 people -- are employed in the sex-segregated job class.
>
> THE STATE OF PENNSYLVANIA DISCRIMINATES IN PAY ON THE BASIS OF SEX.
>
> Women full-time workers in the Pennsylvania State work force earn average wages of over $3,000 less per year than men full-time workers. Women earn an average of $17,505 per year while men earn an average of $20,546 per year. As shown below, this pay differential also exists within occupational groupings. Female-dominated professional jobs earn less on the average than male-dominated professional jobs. Female-dominated clerical and office jobs earn less than male-dominated clerical and office workers.
>
> EXAMPLES OF PAY DIFFERENTIALS WITHIN OCCUPATIONAL GROUPINGS

	Job Classification	Min. Annual Pay	Max. Annual Pay
	Professionals		
Male	Revenue Field Auditor 2	$18,875	$25,624
Female	Nurse 2	16,567	21,477
Diff.		2,308	4,147
	Office and Clerical		
Male	Liquor Store Clerk 2	15,237	18,347
Female	Clerk Typist 2	12,460	15,883
Diff.		2,777	2,464

Pay differentials exist among very similar jobs. As the number of women in a classification increases, pay decreases.

Job Classification	%Male	%Female	Pay Grade
Psych. Security Aide I	97.0	3.0	8-32
Psych. Aide I	37.9	62.1	8-27
Mental Retardation Aide I	32.9	67.1	8-27
Nursing Assistant I	28.9	71.1	8-23

The State's registered nurses are particularly victimized by the disparate standards used to determine classification and pay. Male entry level professional classes, even those with similar job requirements, routinely earn higher pay than female registered nurse entry level classes.

Entry Level Position	%Males	%Females	Entry Level Pay Grade
Nurse I	1.6	98.4	8-32
Fisheries Biologist I	100.00	0.0	8-34
Game Biologist I	100.00	0.0	8-35
Milk Sanitarian I	100.00	0.0	8-35

Only the sex composition of the jobs can explain these pay differentials. In the State of Pennsylvania work force, it pays to be a man.

PNA officials have tried unsuccessfully to resolve these pay inequities through collective bargaining. According to PNA Executive Director David Ranck, "The state has given us no choice but to seek our remedy in the courts."

The District of Columbia Nurses' Association represents many nurses who work for the federal government. Nationwide, there are nearly 34,000 civilian registered nurses in the federal government employed full-time. Clearly, pay equity in the federal civil service is important to registered nurses.

ANA has monitored and actively supported pay equity legislation in the 98th and 99th sessions of Congress. Legislative proposals to promote pay equity in the federal civil service are extremely important to the goal of achieving pay equity nationally. ANA believes it is the responsibility of Congress to insure that the federal government is free from sex-based wage discrimination and therefore should enact such pay equity legislation. Accordingly, it is crucial that the federal government set the standard for non-discrimination by promptly evaluating its own wage policies.

GAO REPORT

ANA finds the General Accounting Report, "options for Conducting a Pay Equity Study of Federal Pay and Classification Systems," to be a good blueprint and first step toward ultimate achievement of nondiscriminatory wage policies in the federal government. We are pleased to see that the report suggested that a study be conducted, and we agree with many of their recommendations for designing such a study. Our major reservation is not with the study itself, but that it not be conducted by those determined to undermine policies promoting fair and equitable treatment of all workers. We trust that this Congress would assure that such bias would not serve to impede any study designed to assess wage discrimination in the federal government.

There are several elements of any pay equity study which must exist if the study is to be objective, valid and credible. First, such a study must be conducted by impartial, outside consultants. It is unrealistic to expect than an employer could or would conduct an impartial study of its own wage policies. Second, there must be careful oversight by representatives of those employees whose jobs are being evaluated and compared. It is particularly important that occupations which are dominantly female be represented. Third, any study must analyze both sex and race discrimination in the determination of federal wage policies.

ANA believes that a study of wage policies of the federal government must also include a study of race-based wage discrimination. It is clear that while pay equity is a major issue for all working women, the issue is all the more significant for women of color. While all women earn about 65¢ for every dollar earned by men, Hispanic women earn only 55¢ and Black women only 59¢. Women of color are penalized twice by gender and race.

The GAO report reviewed the wage differential between men and women and its importance to federal wage setting practices. The report presented options for types of studies which would be useful for evaluating the wage gap in the federal government, with respect to both job content, or job evaluation study, and an economic analysis of the federal workforce.

The GAO report suggested that both a job content analysis as well as economic analysis be conducted in order to determine whether wage discrimination exists in the federal government. Of specific interest is to what extent have pay equity studies conducted of an employer generally been job content studies, which compare occupations according to several objective criteria such as skill, effort, and responsibility. Job evaluation studies have been extremely important in disclosing discriminatory pay practices, and must be an essential component of the federal government study.

Economic analyses, generally, have not been conducted of an employer's work force. Such an analysis would determine to what extent "human capital" factors, such as education, account for differences in pay between men and women, and to what extent discrimination explains the wage gap. We believe that such a study would be enormously beneficial if it would put to rest many of the claims that differences in pay between men and women are due to the human capital factors. Registered nurses, who must at the very least have two years of training,and increasingly may have in excess of five, have often had their wages compared unfavorably with sign painters and tree trimmers. Clearly, we feel, an economic analysis will reveal that a large portion of the wage gap between men and women and between Blacks and Whites, is due to discrimination which is not based on differences in human capital between men and women workers. It is important; however, that those factors evaluated be directly related to employment.

The GAO report also suggested that because of the complexity of this issue, several organizations or groups need to be involved in the study. The report maintained that consideration be given to establishing a steering committee of representatives of various affected groups as well as technical experts in the field to direct all phases of this study. ANA agrees that this is crucial, if such a study is to be both objective and valid. We also agree that this steering committee be responsible for resolving several policy questions.

THE MISAPPREHENSION OF PAY EQUITY

ANA has testified previously on the issue of sex-based wage discrimination before the 98th and 99th Congress. Other witnesses have repeatedly compared the differences in job evaluation studies between nurses and male dominated job categories both in supporting and oppositng testimony.

Some have opposed such evaluations, stating that it is an effort to freeze the wages of blue collar men while artificially raising those of white and pink collar women. They believe comparable worth is an elaborate scheme of wormn with paper credentials to devalue the blue collar man.

Those who disagree with the use of job evaluation studies point out that the court in AFSCME v. State of Washington held that a job evaluation is proof of intentional discrimination. However, the plaintiffs in that case dis not solely rely on a job evaluation, but presented additional substantial evidence to support the charge of discrimination.

Defenders of the present inequities in the wage system attempt to justify the wage gap between men and women by referring to the free market. ANA disagrees with that theory and agrees with the statement of Mayor Rober Issac of Colorado Springs, Colorado, who stated, "...females have always worked for less because they have always been offered less, not as a function of a free market, rather as a function of sex discrimination." Furthermore, the laws of supply and demand have not worked where nurses are concerned. During the nurse shortage of the 1970s, salaries for nurses did not rise accordingly. Mayor Issac was correct in his assessment that the laws of supply and demand must be taken into account when establishing salaries, but only when the market separations are a natural result of the free market system.

Another argument the opponents of pay equity cite is that paper credentials and mental demands are not fairly judged against the worth of apprenticeship, hard work, occupational hazards, and unpleasant working conditions. They infer that higher wages are necessary to attract people to such work. However, that argument makes the false assumption that those with "paper credentials" work in idyllic situations and do not work hard.

Contrary to the media representation of nursing, it is hard work. The majority of nurses do not work nine to five, Monday through Friday. They work afternoon and graveyard shifts, seven days a week and holidays. Yes, the mental demands are great, since nurses are required to know science, math, pharmacology and the social sciences. They perform nursing assessments, counseling, administer medicines and monitor advanced technical procedures and equipment. However, they also expend a great deal of physical work as they lift and turn 200 pound patients and transport heavy equipment and patients in the course of a normal day's work. As for the pleasantness of a nurse's work, nurses are faced with columes of blood, emesis and feces daily. Many would differ with the idea that nursing patients racked with pain and discomfort is a pleasant job. Nor is nursing without occupational hazards. Nurses are exposed to assaultive behavior from confused patients, and infectious diseases such as measles, tuberculosis, and herpes. History is replete with cases of nurses felled with TB and hepititis contacted on their job. The Occupational Safety and Health Administration (OSHA) has issued a hazard alert on Hepititis B for high risk health care professionals including nurses.

Exposure to toxic and carcinogenic substances is not limited to steel and rubber workers. Nurses are exposed to nitrous oxide, ethylene oxide (EtO) and antineoplastic drugs, to list a few. OSHA has also promulgated a standard on EtO and is developing guidelines on the other two hazards. The National Institute of Occupational Safety and Health (NIOSH) is studying the low back injuries which are the highest among health care workers. It is apparent the "angel of mercy" needs more than gratification in a job well done as compensation.

Nurses do not undertake such work with just paper credentials. Their academic preparation is also accompanied with skills gained through clinical experience (apprenticeship) at hospitals. We, too, believe job evaluations should be sex neutral and that work done be evaluated. We appreciate the acknowledgement of President Reagan during National Nurses' Week, April 29-May 6, 1985, "Nursing requires great skill, devotion and a special sense of responsibility...God bless you for the indispensable work yo do all year long." Nurses would Welcome commensurate pay along with those blessings.

We are distressed that some opponents of pay equity have indicated that it might be more equitable to look at whether the worker is or is not supporting a family than to look at whether he or she is a woman, as proposed by the testimony of Phyllis Schlafly, July 25, 1985 before this subcommittee. Such a wage system could produce a quagmire of administrative problems if wages were adjusted to correspond to changes in family responsibilities and situations. Ironically, 1984 Women's Bureau data shows one out of six families are maintained by women and 3/5 of these women are in the labor force and would therefore meet the criteria of Mrs. Schlafly's alternative method of wage setting.

We appreciate the commitment of this subcommittee and, of the Chairman, in promoting pay equity in the federal government. ANA hopes to be able to play a role in that effort. We believe that as the representative of a large group of professionals who are predominantly female, and as an organization which is very knowledgeable about and commited to the achievement of pay equity, we could greatly contributed to that effort. We thank you for the opportunity to present our views.

#####

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 85-1766

AMERICAN NURSES ASSOCIATION, *et al.*

Plaintiffs-Appellants,

v.

STATE OF ILLINOIS, *et al.*,

Defendants-Appellees.

Appeal from the United States
District Court, Northern District of Illinois,
Eastern Division

MOTION TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF THE NATIONAL COMMITTEE ON PAY EQUITY; AMERICAN CIVIL LIBERTIES UNION; ACLU OF ILLINOIS; AMERICAN LIBRARY ASSOCIATION; AMERICANS FOR DEMOCRATIC ACTION; ASIAN PACIFIC AMERICAN BAR ASSOCIATION OF THE GREATER WASHINGTON, D.C. AREA; BUSINESS AND PROFESSIONAL WOMEN/USA, NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS; BUSINESS AND PROFESSIONAL WOMEN'S FOUNDATION; COMPARABLE WORTH PROJECT; COALITION OF LABOR UNION WOMEN; COMMUNICATIONS WORKERS OF AMERICA; FEDERALLY EMPLOYED WOMEN, INC.; FLORIDA LIBRARY ASSOCIATION/WOMEN IN LIBRARIES CAUCUS; INDIANA STATE EMPLOYEES ASSOCIATION; INDUSTRIAL UNION DEPARTMENT (AFL-CIO); MEXICAN-AMERICAN WOMEN'S NATIONAL ASSOCIATION; 9 TO 5, NATIONAL ASSOCIATION OF WORKING WOMEN; NATIONAL CONFERENCE OF PUERTO RICAN WOMEN; NATIONAL EDUCATION ASSOCIATION; NATIONAL FEDERATION OF FEDERAL EMPLOYEES; NATIONAL ORGANIZATION FOR WOMEN; ORGANIZATION OF PAN-ASIAN AMERICAN WOMEN; SERVICE EMPLOYEES INTERNATIONAL UNION; SOCIOLOGISTS FOR WOMEN IN SOCIETY; WOMEN EMPLOYED; WOMEN FOR ECONOMIC JUSTICE; WOMEN ON THE JOB; WOMEN'S DIVISION OF THE GENERAL BOARD OF GLOBAL MINISTRIES--THE UNITED METHODIST CHURCH; WOMEN'S EQUITY ACTION LEAGUE; AND WOMEN'S LEGAL DEFENSE FUND; AND YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF THE U.S.A., NATIONAL BOARD.

JANE M. WHICHER
Roger Baldwin Foundation
of the ACLU
220 South State Street
Chicago, Illinois 60604
(312) 427-7330

ISABELLE KATZ PINZLER
JOAN E. BERTIN
GEORGE KANNAR
American Civil Liberties
Union Foundation
132 West 43rd Street
New York, New York 10036
(212) 944-9800

Attorneys for *Amici Curiae*

NURSE STATISTICS

- General Schedule Series 610.
- Nursing is one of the ten largest occupations in the Federal Government.

Item	1981	1983
Total Number	35,529	36,828
Sex		
Male		2,913
Female		33,915
Location		
D.C.		1,933
U.S.(xD.C.)		33,927
Overseas		968
Pay System		
GS		6,841
Equiv.to GS		27,743
Other		2,244
Grades		
Median		9.00
Average		9.84
Range		4-15
4		29
5		103
6		470
7		232
8		1,335
9		15,681
10		247
11		11,106
12		2,152
13		191
14		101
15		42

	1981	1983
Agency		
Defense agencies		3,817
HHS		2,773
VA		29,828
Other		410
Supervisors		4,633
Nonsupervisors		32,195

RELATED OCCUPATIONS

	#1981	#1982	Grade Med.	Grade Avg.
Nurse Anesthetist (605) GS9-12		476		
Nursing Assistants (621) GS1-6	34,988	22,699	4.00	4.44
Practical Nurses (620) GS3-6	0	10,860	5.00	4.93
Physicians Assistant (603) GS7-11		971	11.00	10.74
Public Health (620) Nurse GS5-15	(this is in X-118, but not in stats)			
Total Medical, Health, Dental, and Public Health (xUSPS)	134,762	137,443		

Grade	Nursing Assistants (621)	Practical Nurses (620)	Physicians Assistants (603)
1	7		
2	171		
3	1,366	434	
4	10,836	1,552	2
5	8,832	7,283	
6	1,451	1,554	
7	1	36	21
8			20
9			177
10			
11			472
12			263
Med.	4.0	5.0 4.93	11.0 10.74
Avg.	4.44		

NAGE SEIU
NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION, AFL/CIO
1313 "L" STREET, N.W. WASHINGTON, D.C. 20005
202/371-6644

STATEMENT OF THE

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE
POST OFFICE AND GENERAL SERVICES
OF THE

SENATE GOVERNMENTAL AFFAIRS COMMITTEE

ON

PAY EQUITY

Mr. Chairman, the National Association of Government Employees which is an affilliate of the Service Employees International Union (AFL-CIO) is pleased for the opportunity to provide testimony on options for conducting a pay equity study of federal pay and classificaton systems.

Long since the passage of the Civil Rights Act, sex discrimination still pervades the wage setting and compensation practices of our nations private and public sector employers. Figures gathered by a score of different statisticians reveal that women are segregated into a few dead end jobs. Female dominated jobs are paid significantly less than their comparable worth based on the skills, duties, and responsibilities of the jobs. As a result of this discrimination women make up a disproportionate share of our nation's poor. Efforts by unions and others to address these serious problems have been frustrated by the failure of the Equal Employment Opportunity Commission to fullfill its statuatory mandate.

Sex segregation in employment in the United States is pervasive. According to 1981 Bureau of Labor Statistics, 64% of all female employees are in positions that have more than two females to every male. 63% of all males work in jobs which are more than two to one their own gender. Of the 400 positions listed by The Department of Labor, 80% of all women work in only 25 occupations. In fact over 35% of all employed women work in secretarial and clerical fields. In the secretarial field, women account for over 99% of all employees with similarily large concentration in clercial, nursing and cleaning positions.

Sex discrimination in the federal government is as pervasive as the private sector experience. The GAO report "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems" provides documentation of the wage gap in the federal sector. Federally employed women earn only 63¢ for each dollar earned by a man. The average salary of female workers is $18,810 compared to $27,720 earned by men. In addition 55% of the women are confined in the lowest grades in each occupational series. Women make up 76% of the work force in grades 1 through 6, but only 24% in grades 10 through 12 and 11% in grades 13 through 15.

Women are paid less than men because of a classification system which is biased against the skills, responsibilities and duties of predominantly female jobs. The general schedule classification system was originally developed through the

Classification Act of 1923. In 1949 a formalized procedure was established for classifying positions into one of 18 grades. This G.S. classificiation system was developed at a time when wage based sex discrimination was blatantly practiced. Females were relegated to a few positions and intentionally paid a lesser salary than her male counterpart solely because of her gender. The standards for evaluating the grades has been infected by this attitude of female inferiority.

In 1975 the General Schedule was quantified by usage of a factor evaluation system. The FES does not modify or amend the standards used for determining the grades. As concluded by a National Academy of Sciences Report, the FES does nothing more than standardize (through use of factor points) the classification standards. The 18 grades are left intact and so is the procedure for making GS grade assisgnments. In the sixty plus years since the passage of the Classification Act, the standards have not appreciably changed except that sex discrimination is now implicit rather then explicit. The FES fails to objectively assess the value of most female jobs because it relies on value judgements and standards developed fifty years ago.

The federal government must be a leader in pay equity. The federal classification system must be analyzed for sex bias, and the discriminating practices in the system must be rooted out.

The most important aspect of a pay equity study is the job content analysis. Job content analysis will provide a reasonably objective assessment of the value of job characteristics so that pay inequities can be identified and corrected. While there are a variety of technical issues as to measurement and implementation these hurdles should not be allowed to detract from the purposes and goals of the study.

We endorse the suggestion of the General Accounting Office that a board based steering committee, composed of representatives of Congress, federal employee unions, and women's organizations, and assisted by a group of technical experts should guide and direct the study. The steering committee will not only increase the likelihood that the results of the study will be credible to all but also that the evaluation itself is based on the broadest range of perspectives and concerns. We further recommend that effected employees be involved in the job content analysis. The employee is perhaps the most knowledgeable source as to the actual duties and responsibilities of the position. In addition job descriptions in the federal sector are frequently outdated and inaccurate and would be an unreliable source to rely on.

NAGE specifically endorses S. 519 which we believe would be a major first step towards addressing the issue of sex based wage discrimination in the federal sector. We also applaud provisions in the bill to establish a Commission on Compensation Equity comprised of political representatives and employee organizations.

We applaud the Sub Committee for it's continued interest in this crucial topic and urge that it mark up and support legislation which will support the cause of pay equity in the federal government.

REPORT BY THE

Comptroller General

OF THE UNITED STATES

Options For Conducting A Pay Equity Study Of Federal Pay And Classification Systems

This report discusses ways to determine why female federal employees earn less than male federal employees. Two general approaches are discussed--economic analysis and job content. Economic analysis attempts to measure and explain existing wage differentials between men and women using characteristics of individuals, occupations, and the workplace. Such an analysis could indicate the extent to which factors such as education, work experience, and occupation account for wage differences by sex in the federal government. The job content approach focuses on the characteristics of jobs in seeking to identify wage disparities. A job content study could provide a measure of the value of various federal jobs to the government and a corresponding comparison of the present grades or salaries for those jobs.

GAO believes that each approach has merit. Accordingly, in GAO's view, the most comprehensive and effective means through which to conduct a pay equity study at the federal level would be to include both approaches.

UNITED STATES GENERAL ACCOUNTING OFFICE

GAO/GGD-85-37
MARCH 1, 1985

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-217675

To Selected Chairpersons and
Members of Congress:

As you requested, this report discusses various options for conducting a pay equity study of federal pay and job classification systems. Our work to date has confirmed the complexity of the pay equity issue and the need for continued, careful planning if a federal study is to be done. Accordingly, this report points out that a steering committee may be needed to continue the planning and provide further directions for such a study.

This report is also being sent today to the other Chairpersons and Members of Congress (listed on the next page) who requested this study.

Milton J. Socolar

Acting Comptroller General
of the United States

The Honorable Mary Rose Oakar
Chair
Subcommittee on Compensation and Employee Benefits
Committee on Post Office and Civil Service
House of Representatives

The Honorable William D. Ford
Chairman
Committee on Post Office and Civil Service
House of Representatives

The Honorable Ted Stevens
Chairman
Subcommittee on Civil Service, Post Office, and General Services
Committee on Governmental Affairs
United States Senate

The Honorable Jeff Bingaman
Ranking Minority Member
Subcommittee on Civil Service, Post Office, and General Services
Committee on Governmental Affairs
United States Senate

The Honorable Dave Durenberger
United States Senate

The Honorable Alan Cranston
United States Senate

The Honorable Daniel Evans
United States Senate

The Honorable Thomas F. Eagleton
Ranking Minority Member
Committee on Governmental Affairs
United States Senate

The Honorable Barney Frank
Chairman
Manpower and Housing Subcommittee
Committee on Government Operations
House of Representatives

The Honorable Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and Civil Service
House of Representatives

COMPTROLLER GENERAL'S REPORT

OPTIONS FOR CONDUCTING A PAY EQUITY STUDY OF FEDERAL PAY AND CLASSIFICATION SYSTEMS

DIGEST

Eleven Chairpersons and Members of Congress asked GAO to provide an analysis of the advantages and disadvantages of various methodologies that could be used to study the pay equity issue at the federal level. They also requested information on who could best carry out such a study, the time and cost that might be involved, and other related issues. In carrying out its analysis, GAO obtained the views of various consultants with expertise in economics, job evaluation, and other disciplines. (See app. I.)

Through the Equal Pay Act of 1963 and the Civil Rights Act of 1964, the Congress sought to deal with the problem of sex-based wage discrimination. Still, for a variety of reasons, women continue to earn substantially less than men. Using Census Bureau data, the following chart shows the average 1980 earnings for year-round, full-time female workers by employment sector and race as a percentage of the earnings of all men.

Employment sector	White women	Black women	Hispanic women	All women
Federal government	63.1	62.2	a	62.8
State and local government	72.7	64.8	62.9	71.5
Private sector	56.8	50.2	47.9	56.0
All sectors	59.2	54.7	51.2	58.7

[a] Data not available.

The table makes it clear that there is a wage gap between men and women. What is not clear is why this wage gap exists and whether discrimination plays a part. For example, some argue that part of this gap is explained by market forces, noting that many women choose to enter certain lower-paying jobs that allow

MARCH 1, 1985

them to handle both traditional family duties and work outside the home. Others suggest, however, that at least part of the wage gap is attributable to employers' failure to pay women "comparable worth" for their work.

How is the term "comparable worth" related to existing law?

The Equal Pay Act of 1963 made it generally unlawful for employers to pay higher wages to employees of either sex who performed equal work in the same establishment. However, some individuals and groups assert that, because men and women usually work in different occupations, the Equal Pay Act is unable to end wage discrimination against women. The concept of comparable worth thus goes beyond equal pay for equal work and suggests that there should be equal pay for work of equal "value" to an employer, even though the jobs are not the same. The value of a job, in this context, is commonly measured in terms of skill, effort, responsibility, and working conditions.

The term "pay equity" is sometimes used interchangeably with the term comparable worth. Nonetheless, pay equity encompasses a broader concept than does comparable worth in that it refers to any efforts designed to assure that fair and objective means are used to set wages. (See pp. 1 and 2.)

How has the comparable worth/pay equity issue developed over time?

The term comparable worth was first used in 1974 in a pay study carried out by a consulting firm for the state of Washington. The study indicated that jobs occupied predominately by female state employees were paid an average of 20 percent less than male-dominated jobs that were gauged to be of comparable value under the analytical approach employed. This study is generally considered to be the first pay equity study. Since that time, however, 34 other states have initiated pay equity studies and some have changed their existing compensation systems consistent with the principles of pay equity. Also, some private sector employers have initiated pay equity studies and some have made adjustments to their compensation systems on the basis of study results. Meanwhile, labor unions and some pay equity advocates have filed lawsuits against numerous public and private sector employers alleging the existence of unjustified pay differentials within specific establishments. (See pp. 2 to 4.)

Why is pay equity an issue of concern to the federal government?

Two pay and job classification systems--the General Schedule (GS) and the Federal Wage System (FWS)--cover 83 percent of federal civilian employees. And, as shown in the following chart, female employees in both systems are concentrated in the lower pay grades, as reflected in their lower wages.

	GS	FWS	TOTAL
Male employees:	819,221	392,165	1,211,386
Percent of total employees	53.8%	90.8%	62.0%
Average salary	$30,229	$22,479	$27,720
Female employees:	703,108	39,627	742,735
Percent of total employees	46.2%	9.2%	38.0%
Average salary	$18,864	$17,848	$18,810
Total employees	1,522,329	431,792	1,954,127

Furthermore, women are concentrated in a few occupational series in the GS and FWS systems. For example, 55 percent of all women employed in GS and FWS jobs are concentrated in 8 percent of the occupations contained in those series.

Thus, the federal government, for whatever reason, employs most women in particular occupational series and in positions ranked at the lower grade and pay levels. This has prompted various groups and individuals to call for a pay equity study of the federal government. (See pp. 6 to 9.)

What approaches can be used to study the pay equity issue at the federal level?

There are several ways in which a pay equity study at the federal level could be carried out. For example, economic analysis could be used to study the relationship between selected employee characteristics and pay differentials. Alternatively, a job content study could be conducted to place a value on each of the important attributes of various jobs and examine whether the total values are consistent with the pay of those jobs.

Economic analysis takes a variety of forms, yet each form generally attempts to measure and explain, to the extent feasible, existing wage differentials between men and women. When completed, an economic analysis of pay differentials could provide the Congress with information on the extent to which factors such as education level, experience, and occupation account for wage differentials by sex in the federal government. Such information could be used to identify any unexplained causes of wage differentials. Further analysis would be needed, however, to determine whether and, if so, what actions would need to be taken to achieve pay equity. (See ch. 2.)

Like economic analysis, the job content approach relies on a variety of specific methodologies. But each methodology is consistent in seeking to measure the value of jobs--rather than individual employees--to an employer. Although the job content approach has been subject to much criticism, it nonetheless has been used extensively as a means for determining whether and to what extent similar pay is accorded to equally-valued jobs in a particular organization. When completed, a job content study could provide the Congress with a measure of the value of various federal jobs to the government and a corresponding comparison of the present grades or salaries for those jobs. (See ch. 3.)

Which of the above-described approaches seems best-suited for a federal study?

In GAO's view, both the economic analysis and job content approaches have value for addressing the issues of pay equity and wage disparities by sex. However, neither approach is sufficient by itself to explain the wage gap. The job content approach alone may fail to consider important human capital or institutional variables (e.g., seniority, training, or union contracts). Similarly, the characteristics of the jobs (e.g., the skill, effort, and responsibility required) may be ignored if only the characteristics of employees or the workplace are considered. Therefore, both approaches should be included in a federal pay equity study. That is, studies of each type should be conducted, either sequentially or simultaneously. Such an approach would provide the Congress with a comprehensive analysis of the pay equity issue. (See pp. 47 to 52.)

Who should carry out the study?

GAO's work to date has confirmed the complexity of the pay equity issue and the need for continued, careful planning if a federal study is to be done. Important policy decisions must be made as part of the next step in the process, including goal setting and study design.

Because this issue is so complex, it seems clear that several organizations or groups may need to be involved in a study. Accordingly, consideration should be given to establishing a steering committee--composed of representatives from affected groups and experts from various fields--to direct the future course of this effort. A steering committee could report directly to Congress and could be granted the authority to make policy decisions, to hire and direct the efforts of needed consultants, to coordinate with appropriate federal agencies and, perhaps most importantly, to interpret study results and to make recommendations. (See pp. 52 to 54.)

Contents

		Page
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	Legal background	4
	Federal pay and classification systems	6
	Sex composition of the federal work force	7
	Objectives, scope and methodology	10
2	USING ECONOMIC ANALYSIS TO STUDY SEX-BASED WAGE DIFFERENTIALS	12
	Background information	12
	Individual characteristics	13
	Occupational characteristics	15
	Institutional characteristics	17
	Economic studies analyzing wage differentials in the federal government	19
	General steps in conducting an economic study at the federal level	21
3	THE JOB CONTENT APPROACH TO PAY EQUITY STUDIES	26
	Job evaluation is used extensively in setting pay rates	26
	The job content approach	28
	Point factor methodological options	32
	Results of pay equity studies in state and local governments	36
	General steps in conducting a job content study at the federal level	39
4	SELECTING A STUDY APPROACH AND RELATED CONSIDERATIONS	47
	Comparing economic analysis to the job content approach	47
	Using both economic and job content approaches in a federal pay equity study	48
	Deciding who should carry out the study	52
	Cost and time considerations	54
APPENDIX		
I	Request letters	55
II	Pay equity studies and related activities in the states	62
III	Legal background	66

		Page
IV	Pay setting in the GS and FWS systems	89
V	List of organizations/individuals contacted and participants on panels	91

ILLUSTRATIONS

Average earnings of year-round full-time female workers in the U.S. by employment sector and race as a percentage of the earnings of all men	1
Map showing pay equity studies and related activities in the states	3
Percent full-time male and female employees in the GS system by grade and sex	8
Number, percent, and average salaries of full-time male and female employees in the GS and FWS	9
Number of GS and FWS occupational series which are 70 and 90 percent male and female	9
Men's and women's monthly salaries for comparably-evaluated jobs, State of Washington - August 1974	45
Point/Pay intersects and pay lines for male and female occupations in the State of Washington, August 1974	46
Regression demonstrating effect of sex segregation on wages	52

ABBREVIATIONS

AFSCME	American Federation of State, County, and and Municipal Employees
CPDF	Central Personnel Data File
FES	Factor Evaluation System
FWS	Federal Wage System
GAO	General Accounting Office
GS	General Schedule
OPM	Office of Personnel Management

CHAPTER 1

INTRODUCTION

For decades, individuals speaking for women's rights have sought public debate over issues affecting women in the work place. These issues have included, among other things, wage discrimination and limited access to professional and technical professions. Public debates on these issues have led to a number of legislative changes. In the area of wage discrimination, the Equal Pay Act of 1963 (29 U.S.C. § 206(d)) made it generally unlawful for employers to pay higher wages to employees of either sex who perform substantially equal work in the same establishment. Also, in Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000a-h), the Congress prohibited not only wage discrimination but also various other forms of employment discrimination.

Together, these two laws have been the basis for numerous attempts to address wage discrimination against women. Yet some believe that the application of these laws to date has not resolved what they see as a continuing discrimination problem. Census Bureau and Bureau of Labor Statistics data often are used to support their contention, indicating a sizeable and persistent wage gap between men and women in the United States. Women working full-time on a year-round basis earn approximately 60 percent as much as their male counterparts, and this earnings gap has changed very little over the past 40 years. As the table below illustrates, the wage gap between men and women varies by race and by sector of employment.

AVERAGE EARNINGS OF YEAR-ROUND FULL-TIME FEMALE WORKERS IN THE U.S. BY EMPLOYMENT SECTOR AND RACE AS A PERCENTAGE OF THE EARNINGS OF ALL MEN

Employment sector	White women	Black women	Hispanic women	All women
Federal government	63.1	62.2	[a]	62.8
State and local government	72.7	64.8	62.9	71.5
Private sector	56.8	50.2	47.9	56.0
All sectors	59.2	54.7	51.2	58.7

[a] Information not available

Source: Current Population Reports, Series P-60, No. 132, Table 58, U.S. Census Bureau, 1980.

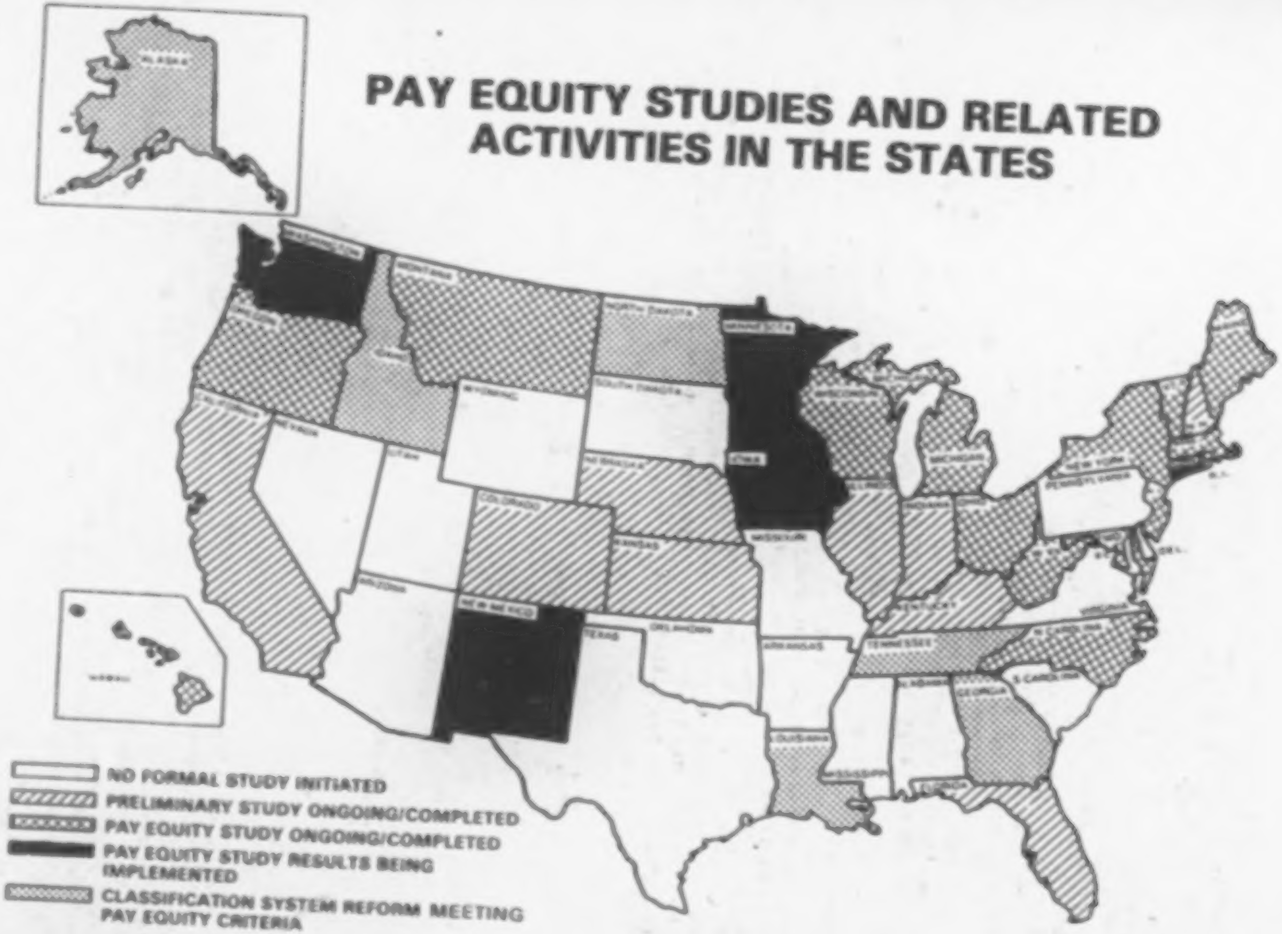
Few would argue that there is not a wage gap between men and women. Instead the debate centers on the question of why this gap exists and whether discrimination plays a part. Some suggest that the gap is due to market forces, or to women choosing to enter certain low-paying jobs that allow them to handle both traditional family duties and work outside the home. Others suggest, on the other hand, that at least part of the wage gap is attributable to women not receiving "comparable worth" for their work. They assert that, because men and women usually work in different occupations, the Equal Pay Act is unable to end wage discrimination against women. The concept of comparable worth or "pay equity" thus goes beyond equal pay for equal work and suggests that there should be equal pay for work of equal "value" to an employer, even though the jobs are not the same.[1] The value of a job is usually measured in terms of skill, effort, responsibility, and working conditions.

The term comparable worth was first commonly used in 1974 in a pay study carried out by a consulting firm for the state of Washington. The study indicated that jobs occupied predominately by female state employees were paid an average of 20 percent less than comparably valued, male-dominated jobs. This study is generally considered to be the first "comparable worth" study. Since that time, however, 34 other states and a number of localities have taken actions related to the issue of pay equity, as illustrated on the next page. (The categories used in the chart are explained more fully in app. II.)

---

[1] There is no agreed upon definition for the terms "comparable worth" or "pay equity," which are sometimes used interchangeably. Comparable worth is often used to specifically refer to the theory that jobs dominated by women should be paid the same as jobs dominated by men if the work is equally valued by the employer. Pay equity may be viewed as a broader term which encompasses comparable worth, but also includes any efforts to assure that wages are set objectively and fairly.

PAY EQUITY STUDIES AND RELATED ACTIVITIES IN THE STATES



☐ NO FORMAL STUDY INITIATED
▨ PRELIMINARY STUDY ONGOING/COMPLETED
▩ PAY EQUITY STUDY ONGOING/COMPLETED
■ PAY EQUITY STUDY RESULTS BEING IMPLEMENTED
▦ CLASSIFICATION SYSTEM REFORM MEETING PAY EQUITY CRITERIA

Some private sector employers have initiated their own pay equity studies and some have made adjustments to their compensation systems on the basis of study results. Meanwhile, labor unions and pay equity advocates have filed lawsuits against many public and private sector employers alleging the existence of pay differentials within specific establishments.

Although a pay equity study has been proposed in various bills, and several hearings on the issue have been held, the federal government has not initiated a comprehensive pay equity study of the federal personnel system. During the 98th Congress, the House of Representatives passed legislation that would have mandated a study of federal pay and classification systems to determine if they discriminate in wages on the basis of sex. In the Senate, similar legislation was introduced but not passed. Instead, House and Senate conferees agreed to request that we prepare a report presenting various options for conducting a pay equity study at the federal level. This report responds to that request. Meanwhile, several bills have been introduced in the 99th Congress that address the pay equity issue:

--H.R. 27 calls for a pay equity study of selected federal government position classification and grading systems;

--H.R. 375 would require periodic reports to the President and the Congress on actions taken to enforce federal laws on compensation discrimination; and

--S. 5 calls for the executive branch to enforce equal opportunity laws so as to promote pay equity.

The remainder of this chapter provides further background information related to the pay equity issue, including a brief legal analysis; information on federal classification and pay systems; information on the sex composition of the federal work force; and a discussion of the report's objectives, scope, and methodology. Chapters 2 and 3 discuss two different approaches to pay equity studies--economic and job content analysis--and relate those approaches to the federal government. Chapter 4 discusses federal government study options--including the possibility of combining the job content and economic approaches--and issues concerning who might carry out a study, at what cost, and in what time frame.

LEGAL BACKGROUND

Two previously mentioned laws--the Equal Pay Act of 1963 and the Civil Rights Act of 1964--and several court cases are relevant to the pay equity issue. The following is a brief summary of those acts and recent judicial developments. Further discussion of these and other developments are included in appendix III.

The Equal Pay Act of 1963 prohibits unequal pay for equal work performed by women and men in the same job unless the pay differential is based on: (1) a seniority system, (2) a merit system, (3) a system which measures earnings by quantity or quality of production, or (4) any factor other than sex. Title VII of the Civil Rights Act of 1964 generally prohibits employment discrimination on the basis of sex. However, the so-called "Bennett Amendment" to Title VII provides that an employer may compensate employees differently on the basis of sex if such differentiation is "authorized" by the Equal Pay Act.

Before 1981, federal courts interpreting Title VII expressed different opinions on the meaning of the term "authorized" in the Bennett Amendment. Some courts interpreted the term to mean that a claim of sex-based wage discrimination could not be brought under Title VII unless the female and male jobs being compared were the same or substantively similar, as required under the Equal Pay Act. Other courts adopted a broader interpretation, holding that the Bennett Amendment merely incorporates into Title VII the Equal Pay Act's four defenses, as outlined above. Under this latter interpretation, Title VII's prohibition against wage discrimination would extend to jobs which are not substantially equal under the Equal Pay Act.

The Supreme Court resolved the issue of the Bennett Amendment in 1981 when it decided County of Washington v. Gunther, 452 U.S. 161 (1981). In Gunther, female prison guards alleged that the county paid them only 70 percent of what male guards earned, even though the county had evaluated their jobs as being worth 95 percent of the male guards' jobs. Although the female and male guards performed some different duties, the Court held that the women could maintain a claim under Title VII for intentional sex discrimination. In so holding, the Court ruled that the Bennett Amendment incorporates into Title VII only the Equal Pay Act's four defenses, and not its "equal work" standard. The Court emphasized that its decision addressed direct evidence of intentional discrimination, not the "controversial concept" of comparable worth.

Federal courts deciding wage inequality cases in the wake of Gunther still expressed different opinions concerning the reach of Title VII. However, most courts restricted their findings of Title VII liability to cases involving evidence of intentional discrimination. Several courts specifically rejected "pure" comparable worth claims grounded on an empirical comparison of dissimilar female and male-dominated jobs, holding that Title VII does not require a court to assess the worth of functionally unrelated jobs.

The U.S. District Court's decision in American Federation of State, County, and Municipal Employees (AFSCME) v. State of Washington, 578 F. Supp. 846 (W.D. Wash. 1983), was the first case to impose Title VII liability for an employer's failure to implement a "comparable worth" compensation system. As mentioned above, the pay equity study conducted in 1974 in the state of Washington indicated that, on the average, female-dominated jobs were paid 20 percent less than male-dominated jobs of generally equivalent value. Despite these findings, the state legislature did not authorize any remedial pay plan until shortly before the court decision in 1983.

Likening the AFSCME case to Gunther, the district court held that the state's delay in rectifying acknowledged pay disparities constituted intentional sex discrimination. The court also found the state liable under the "disparate impact" theory, which prohibits facially-neutral practices having an adverse impact on a protected group. Specifically, the court determined that the state's compensation system had a disparate impact on women, and that the state had failed to demonstrate a legitimate and overriding business justification for the discrimination. Washington State has appealed the AFSCME decision to the U.S. Court of Appeals for the Ninth Circuit.

FEDERAL PAY AND CLASSIFICATION SYSTEMS

The federal government uses over 60 different systems to set pay for its employees, but these systems can be described under two general methods--rank-in-position and rank-in-person. This section briefly discusses those methods and two of the major pay systems in each method. A more complete discussion of these methods and systems may be found in another GAO report.[2] Also, appendix IV describes how pay is currently set in the GS and FWS systems.

Rank-in-position

Rank-in-position methods are used for all but a very small percentage of federal employees, and are based on the premise that the duties and responsibilities of a position should determine the pay of job incumbents. Similar positions are first grouped together into job categories or series through a process known as position classification. Then, the worth of those jobs is measured through one of several job evaluation processes. Job evaluation measures the relative degree of skill, effort, and responsibility required by the position and the working conditions under which the job is performed.

Two rank-in-position systems--the General Schedule (GS) and the Federal Wage System (FWS)--cover 83 percent of federal civilian employees. Both systems cut across virtually all federal agencies and are overseen by the Office of Personnel Management (OPM). The GS system covers most white-collar positions, encompassing 1.5 million employees in 441 occupational series and 18 pay grades. GS positions are evaluated using either nonquantitative narrative or quantitative factor evaluation methods. In both methods, OPM develops occupational standards that are intended to ensure consistent treatment of occupations across agencies.

---

[2] Description of Selected Systems for Classifying Federal Civilian Positions and Personnel, (GAO/GGD-84-90, July 13, 1984).

The FWS system covers approximately 431,000 blue-collar positions in 444 occupational series. There are three major FWS schedules--wage grade, work leader, and wage supervisor. Wage grade employees perform nonsupervisory work, and are evaluated using standards for specific occupations. Work leader and wage supervisor schedules cover supervisory positions, and are evaluated using supervisory or leader standards. Like the GS system, OPM develops job grading standards to attempt to ensure consistent treatment of similar positions across agencies.

Rank-in-person

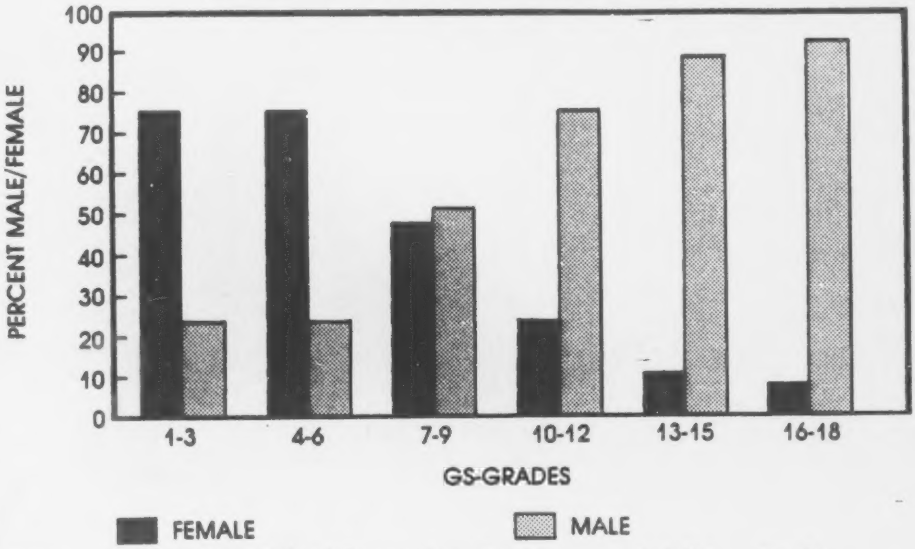
In contrast to the rank-in-position method of pay setting, rank-in-person methods determine the value or worth of an employee to the organization, not the job as in rank-in-position systems. An employee's rank, and therefore pay, is determined by evaluating the individual's ability, qualifications, and accomplishments without necessarily considering the duties and responsibilities of the position the person occupies. Thus, employees in rank-in-person systems may perform the same work but be paid differently.

Two of the largest civilian rank-in-person systems in the federal government are the systems for Foreign Service professionals (primarily at the State Department) and medical professionals at the Veteran's Administration's Department of Medicine and Surgery. The Foreign Service system covers about 14,000 white-collar employees involved in planning, conducting, and implementing U.S. foreign policy. The Department of Medicine and Surgery employs about 39,000 medical professionals, including physicians, dentists, nurses, and physician assistants. In both systems, evaluation boards consider the employees' knowledge and experience in setting their pay.

SEX COMPOSITION OF THE FEDERAL WORK FORCE

In addition to understanding the general characteristics of the principal federal pay systems, it is also important to know where men and women are located within those systems. Because the GS and FWS systems constitute such a large percentage of the federal work force, they will be the focus of discussion in this section. OPM data indicates that female employees in both the systems are concentrated in the lower pay grades, as illustrated by the following chart for the GS system.

PERCENT FULL-TIME MALE AND FEMALE EMPLOYEES
IN THE GS SYSTEM BY GRADE AND SEX



Source: OPM Federal Workforce Statistics as of 4/84. Grade 16-18 data includes Senior Executive Service personnel.

Because women are concentrated in the lowest grade levels of both the GS and FWS systems, their average salaries are also lower than men's. The following table shows the numbers and percent of employees in each system and their average salaries by sex.

NUMBER, PERCENT, AND AVERAGE SALARIES OF FULL-TIME MALE AND FEMALE EMPLOYEES IN THE GS AND FWS

	GS	FWS	TOTAL
Male employees:	819,221	392,165	1,211,386
Percent of total employees	53.8%	90.8%	62.0%
Average salary	$30,229	$22,479	$27,720
Female employees:	703,108	39,627	742,735
Percent of total employees	46.2%	9.2%	38.0%
Average salary	$18,864	$17,848	$18,810
Total employees	1,522,329	431,792	1,954,121

Source: OPM Federal Civilian Workforce Statistics as of 10/31/83.

Furthermore, women are concentrated in fewer occupational series in the GS and FWS systems than their male counterparts. Fifty-five percent of the women are employed in just 77 of the 885 occupational series in the two systems, whereas 77 percent of the men are employed in 658 of the 885 series. The chart below shows the number of occupational series that are 70 and 90 percent or more sex-segregated.

NUMBER OF GS AND FWS OCCUPATIONAL SERIES WHICH ARE 70 AND 90 PERCENT MALE AND FEMALE

	GS	FWS	TOTAL
Total occupational series	441	444	885
Number of occupational series:			
70 percent or more male	245	413	658
70 percent or more female	67	10	77
90 percent or more male	108	347	455
90 percent or more female	20	6	26

Source: OPM Federal Civilian Workforce Statistics as of 10/31/83.

In sum, the federal government, for whatever reason, employs most women in particular occupational series, in positions ranked at the lower grade levels, and, therefore, at lower pay levels. Women are also largely absent from the blue-collar FWS system. This data has prompted various groups and individuals to call for a pay equity study of the federal government.

OBJECTIVES, SCOPE, AND METHODOLOGY

In a letter dated November 15, 1984, eight Chairpersons and Members of Congress requested that we present options for selecting a scope and methodology for a pay equity study of federal executive agencies' pay and classification practices. Three additional Members added their names to the request in letters dated November 20 and November 29, 1984. (See request letters in appendix I.)

Specifically, we were asked to prepare a report to include:

--An analysis of the advantages and disadvantages of methodologies that could be used in a study to determine whether and, if so, the extent to which sex-based wage discrimination exists in federal pay and classification systems.

--An estimate of the time that would be involved in conducting such a study.

--An estimate of the cost of conducting such a study.

--A discussion of the pros and cons of having GAO, OPM, a private contractor, or another party conduct the study.

--A description of the relationship of an ongoing OPM review of the federal classification process to the pay equity issue.

Because neither the Equal Employment Opportunity Commission nor the courts have defined what constitutes sex-based wage discrimination, our report does not describe study methodologies which specifically address the issue of sex-based wage discrimination. Instead, the methodologies that we describe are designed to identify unexplained differences between male and female earnings levels, which may or may not be attributable to discrimination.

As we point out in this report, before a federal pay equity study is initiated, numerous policy decisions need to be made. For this reason, it was not feasible to discuss the specific time and costs that might be involved in conducting a study. We also did not discuss the pros and cons of various public or private sector groups doing the study but rather, as discussed in chapter 4, point out that a broadly representative steering committee may be the appropriate mechanism to direct the study. Also, this report does not discuss the relationship of the ongoing OPM review of the federal classification process to the pay equity issue, as was requested. OPM officials declined to discuss any details of their study until their report is final.

In making our analysis, we conducted an extensive literature search and contacted experts in the fields of job evaluation and labor economics. We also contacted federal employee organizations, professional associations, and organizations representing state and local governments. The federal agencies contacted included OPM, the Equal Employment Opportunity Commission, the Department of Labor, the Civil Rights Commission, and the Civil Rights Division of the Department of Justice.

To obtain greater insight into the issue, we hosted two consultant panels. On December 17, 1984, we conducted a forum on pay equity activities in the states, and on February 9, 1985, we hosted a panel to discuss the specific issues related to conducting a federal pay equity study. A complete list of the organizations and experts we contacted during this review is included as appendix V.

We also analyzed October 1983 and April 1984 federal employee data provided to us by OPM. In addition, we relied heavily on information we developed while preparing the following reports:

--Description of Selected Systems for Classifying Federal Civilian Positions and Personnel (GAO/GGD-84-90, July 13, 1984); and

--Distribution of Male and Female Employees in Four Federal Classification Systems (GAO/GGD-85-20, Nov. 27, 1984).

Although this report focuses on methodological options designed to identify wage differentials by sex in federal pay and classification systems, similar methodologies might also be used to study other types of wage disparities (e.g., wage gaps based on race). This review was performed from November 1984 to February 1985.

CHAPTER 2

USING ECONOMIC ANALYSIS TO STUDY SEX-BASED WAGE DIFFERENTIALS

One means through which to analyze wage differentials by sex involves the application of various economic theories and models to specific questions concerning employment patterns and wage determinants. Typically, economists have carried out such analyses by attempting to identify those factors that predict wages and then seeking to determine the extent to which the factors explain wage differentials between men and women. This chapter briefly describes several economic theories as they relate to employment and wages and illustrates various practical applications of these theories. The various approaches focus on

--individual characteristics of workers, such as education and work experience;

--occupational characteristics, such as the concentration of women in particular fields; and

--institutional characteristics, such as regional variations and intra-firm policies.

Also included is a description of related empirical research involving the federal government. And, finally, because some form of economic analysis may be a desirable component in a pay equity study at the federal level, this chapter presents a general outline of steps that could be followed in such a study.

BACKGROUND INFORMATION

Mainstream economic theory emphasizes the characteristics of a market-based economy in which the forces of supply and demand strongly influence the prices paid for various commodities. Labor, in this context, is seen as a commodity similar in some respects to other market commodities, though more complex than others. Wages are treated as the price paid for this commodity. Wages are thus set primarily by the interaction of supply and demand, with supply corresponding, for example, to the relative availability and characteristics of workers, and demand, for example, to the needs and behaviors of individual and industry-wide employers.

The interaction of supply and demand forms the basis for examining the factors that account for wages and wage differentials between men and women. Within that context economists and social scientists have traditionally focused on the individual characteristics of workers or categories of workers in seeking to analyze wages.

Some researchers, however, have suggested that there are forces beyond the traditional interaction of supply and demand that influence the determination of wages and the incidence of wage differentials. This perspective does not reject the role of supply and demand in wage determinations; rather, it seeks to determine whether there are other important factors that affect the wage-setting process. One such approach focuses on occupational characteristics and the degree and nature of occupational segregation.

Still another approach derives from the institutional theory of labor economics. Here, the characteristics of particular labor markets or sectors and related institutional factors, such as variations in union membership and regional conditions, are thought to play an additional, significant role in wage determinations and wage differentials.

INDIVIDUAL CHARACTERISTICS

The individual characteristics approach is most often viewed in terms of the human capital model of earnings levels.[1] This model is based on a presumed relationship between various human capital characteristics (such as education and length and nature of work history) and productivity. Productivity is seen as one important explanation for variations in wages among different categories of workers, such as male and female workers. In theory, a greater investment in human capital should lead to greater productivity and, in turn, to higher wages.

Generally, researchers examining the impact of human capital characteristics on wages first determine the average wages for male and female workers in the targeted population. If their analysis focuses on a single employer, they compute the average wages for men and women within the subject firm. If their analysis examines the wages of male and female workers in general, they may rely on data collected by, for example, the Census Bureau or the Bureau of Labor Statistics. Researchers then identify any wage differential between male and female workers and use human capital characteristics to explain that differential.

The statistical technique of multiple regression analysis is generally used to examine the relationship between these human capital characteristics and the wage differential. This technique enables researchers to determine how much of the difference in wages can be explained by the fact that men and women have different human capital characteristics.

---

[1] Human capital is defined as an individual's stock of productive skills. See Gary S. Becker, Human Capital, 2nd ed. (New York: Columbia University Press, 1975), chapter 2.

Work experience is an example of one characteristic believed to be part of an individual's stock of human capital. Accordingly, a number of human capital studies have attempted to examine the effect of work experience on wages. One such study (Mincer and Polachek, 1978)[2] was based on the hypothesis that women's intermittent participation in the labor force, due to marital commitments, accounts for a significant portion of the difference in male and female wages. Mincer and Polachek examined work force data for married women over a period of time. The study concluded that from 19 to 49 percent of the wage gap between men and women could be attributed to variations in such work history patterns. In addition, a separate team of researchers (Mincer and Ofek, 1983)[3] found that wages for women re-entering the labor market were lower than at the time they left, and that the longer the interruption, the greater the decline in earnings.

In comparison, Sawhill[4] looked at work force statistics for women in different marital groups in an attempt to determine the impact of marital status on wages (wage differentials). Specifically, this study found that earnings for single women rose at a faster rate over time than for married women, indicating the value of labor market experience. Nonetheless, single women at all experience levels were found to have considerably lower earnings than did men with comparable levels of experience. These findings prompted the researcher to conclude that the wage returns received by men and women for equivalent work experience were different.

---

[2] Jacob Mincer and Solomon Polachek, "An Exchange Theory of Human Capital and the Earnings of Women: Women's Earnings Reexamined," Journal of Human Resources, Vol. 13, No. 1 (Winter, 1978), pp. 118 - 134.

[3] Jacob Mincer and Haim Ofek, "Interrupted Work Careers: Depreciation and Restoration of Human Capital," Journal of Human Resources, Vol. 17, No. 1 (Winter, 1982), pp. 3 - 24.

[4] Isabel V. Sawhill, "The Economics of Discrimination Against Women: Some New Findings," Journal of Human Resources, Vol. 8 (Summer,1973), pp. 383 - 396, cited in Nancy S. Barrett, "Women in the Job Market: Occupations, Earnings, and Career Opportunities," in The Subtle Revolution, ed. Ralph E. Smith (Washington, D.C.: The Urban Institute, 1979), p. 38.

In 1979, a team of researchers (Corcoran and Duncan)[5] used a more detailed and more comprehensive data set (relative to the Sawhill study) to further investigate the extent to which variations in human capital characteristics accounted for wage differentials. Various indicators were included to measure the impact of work history (e.g., years with current employer prior to current position, years of training completed on current job), labor force attachment (e.g., employee-placed limits on job hours or location, employee plans to stop work for reasons other than training), and education on the wage gap between men and women. The researchers concluded that 44 percent of the wage gap could be attributed to differences in so-called human capital variables. Specifically, 39 percent was attributed to work history, 3 percent to labor force attachment, and 2 percent to formal education.

In sum, the empirical research using the individual characteristics suggested by the human capital approach has generally accounted for up to half of the wage gap between men and women.[6] As might then be expected, attention subsequently has focused on the size and meaning of the remaining differential.

OCCUPATIONAL CHARACTERISTICS

Another approach to the study of wage differentials by sex is based on a suggested relationship between occupational characteristics and wages. In the context of male-female wage differentials, this relationship is believed to be important because men and women tend to be concentrated in different occupations (i.e., occupational segregation).[7]

Several explanations have been offered for the occurrence of sex-based occupational segregation.

---

[5] Mary Corcoran and Gregory J. Duncan, "Work History, Labor Force Attachment, and Earnings Differences Between the Races and Sexes," Journal of Human Resources 14 (Winter, 1979), pp. 3 - 20; cited in Donald J. Treiman and Heidi Hartmann, eds., Women, Work, and Wages (Washington, D.C.: National Academy of Sciences Press, 1981), p. 23.

[6] Donald J. Treiman and Heidi I. Hartmann, eds., Women, Work, and Wages (Washington, D.C.: National Academy of Sciences Press, 1981), pp. 20 - 21.

[7] For empirical evidence on occupational segregation, see, for example, Barbara Bergmann and Irma Adelman, "The 1973 Report of the President's Council of Economic Advisors: The Economic Role of Women," American Economic Review, 63 (September 1973), pp. 509-14.

--Some contend that occupational segregation is the result of women's personal choices. For example, women may choose certain occupations because they have preferences for certain types of work, or because certain occupations allow them greater flexibility to meet traditional home and family responsibilities.

--Others contend that occupational segregation is not the result of women's personal choices but, instead, is the result of their lack of access to particular kinds of work. According to this hypothesis, employers have channeled women into certain occupations and denied them the opportunity to enter other occupations.

--A third explanation for occupational segregation combines the previous two explanations. This explanation holds that women have made personal choices to enter certain occupations because they perceive that they will be denied access to others, or, even if given access, will not be granted promotions.

In any case, the occupational characteristics approach to the analysis of sex-based wage differentials recognizes that women are concentrated in a relatively small number of occupations. Further, these occupations tend to receive low wages.[8]

Several explanations have been suggested for why these occupations receive low wages. Some contend that because there is an excessive number of women trained for a limited number of occupations, there is an oversupply of women with particular skills. This, in turn, is believed to result in lower wages. Other theorists contend that the features associated with certain occupations (e.g., short work days, flexible hours) result in lower wages. Still another explanation contends that female-dominated occupations are paid low wages because of the personal prejudice of employers. Accordingly, these occupations receive low wages precisely because the work is performed by women.

Researchers examining the relationship between occupational characteristics and wages generally use a methodology similar to that used in human capital research--multiple regression analysis. Typically, the analysis includes both human capital and occupational characteristics. And, most of the studies indicate that occupational characteristics can at least partially explain the earnings gap, although there is variance in the extent of the differential explained. For example, Bluestone et. al. (1973)[9] used a regression equation with variables for both education and occupational classification (using broad census groups). This study found that education and occupational classification together accounted for approximately 6 percent of the male-female earnings differential.

---

[8] Dixie Sommers, "Occupational Rankings for Men and Women by Earnings," Monthly Labor Review, Volume 97 (August 1974), pp. 34-51.

Additional studies, however, indicate that the more detailed the occupational classifications, the larger the amount of the differential explained. Treiman and Hartmann[10] also used census data to examine major occupational groups. They found, first, that by using 12 occupational groups, approximately 10 percent of the differential could be explained. Using 479 occupational categories, however, they were able to explain from 35 to 40 percent of the differential.

Thus, by adding occupation-related factors to the equation, some researchers have been able to further explain wage differentials. Other researchers have gone a step further by adding institutional factors to the equation.

INSTITUTIONAL CHARACTERISTICS

Institutional theory uses a somewhat different approach in seeking to explain how wages are set. This theory acknowledges the importance of supply and demand forces in setting wages. However, it holds that institutional characteristics lead to a relatively less flexible wage determination process when compared to supply and demand alone. According to institutionalists, supply and demand operates imperfectly, thereby allowing room for employer discretion in wage setting and job allocation.

Several institutional characteristics are believed to affect the wage-setting process. For example, one model of wage setting used by institutional theorists centers on the concept of an internal labor market. This model focuses on the internal job structure of an organization and suggests that wage rates for some occupations are affected more by employer practices within an organization (e.g., classification and compensation systems or promotional practices) than by supply and demand in the marketplace.[11]

---

[9] Barry Bluestone, William M. Murphy and Mary H. Stevenson, Low Wages and the Working Poor, (Ann Arbor, Michigan: University of Michigan, Institute of Labor and Industrial Relations, 1973).

[10] Donald J. Treiman and Heidi Hartmann, eds., Women, Work and Wages, (Washington, D.C.: National Academy of Sciences Press, 1981), p. 33.

According to these theorists, an internal labor market is made up of many jobs that are unique to particular employers. As a result, many jobs within the internal labor market, and their wages, are not subject to external supply and demand pressures. Instead, job allocation and wage determination is a routine process governed by employers' administrative rules. Most jobs are filled by employees advancing up career ladders established by the employer. These researchers believe that relative wages are set by procedures grounded in custom and are rarely changed.

Institutional theory recognizes that individuals typically enter an internal labor market through ports-of-entry (i.e., entry level positions). These jobs are usually found at the bottom of established career ladders. The institutional model contends that supply and demand market forces more strongly affect these positions, when compared to other jobs within the internal labor market.

According to these theorists, the existence of internal labor markets can partially explain the earnings differential between men and women. That is, either by choice or because they are denied access, women are not employed in those occupations which provide substantial promotional and wage growth opportunities. Instead, institutionalists believe that women occupy positions with limited or no promotion potential and, as a result, their wages are lower.

Institutional theory has also given rise to the development of the dual labor market concept. That concept holds that there are two employment sectors--a primary sector and a secondary sector. The primary sector consists of those firms in which the entry-level jobs lead to higher paying positions, longer-term employment, pensions, and other desirable benefits of employment. The secondary sector consists of jobs with few career ladders or none. Institutional characteristics often attributed to the primary sector include high union activity and capital intensive investment. Secondary market characteristics, on the other hand, include low union activity and low capital investment. Dual labor market analysis suggests that the representation of women in secondary sector jobs be examined as a possible source of male-female wage differences.

---

[11] Francine D. Blau and Carol L. Jusenius, "Economists' Approaches to Sex Segregation in the Labor Market: An Appraisal," pp. 190-192 in Martha Blaxall and Barbara Reagan, editors, Women and the Workplace: The Implications of Occupational Segregation, (Chicago: University of Chicago Press, 1976).

A study by Blau[12] examined the types of employers for whom men and women worked. Blau found that, within many occupations, a substantial portion of the earnings differential between men and women could be explained by the tendency for women to be concentrated in low-paying firms and men in high-paying firms. This research lends support to the hypothesis that institutional features of firms can explain part of the male-female wage differential. Institutional theorists thus seem to have further expanded the types of variables that might predict and explain wages.

ECONOMIC STUDIES ANALYZING WAGE DIFFERENTIALS IN THE FEDERAL GOVERNMENT

Because most economic studies of sex-based wage differentials have focused on the private sector, only a limited body of empirical research addresses the existence and/or extent of the problem in the federal government. A summary of this research is included below and is followed by a discussion of a potential approach to, and related difficulties associated with, a possible economics-based federal study.

In a series of studies, Borjas[13] examined the wage structure within the federal government. The first study sought to determine (1) which human capital, occupational, or institutional characteristics best predicted federal sector earnings and (2) whether these characteristics were afforded different values by the various agencies.

A one percent sample (which included data on 21 agencies) of OPM's Central Personnel Data File (CPDF) was used to examine the above questions. The analysis included the following characteristics:

--education, experience, and job tenure;

--sex, race, veteran status, health, and military status;

--regional or headquarters offices.

---

[12] Francine D. Blau, Equal Pay in the Office, (Lexington, Mass.: Lexington Books, 1977).

[13] George J. Borjas, "Wage Determination in the Federal Bureaucracy: The Role of Constituents and Bureaucrats," Journal of Political Economy, 88 (December, 1980) pp. VIII and "The Measurement of Race and Gender Wage Differentials: Evidence from the Federal Sector," Industrial and Labor Relations Review, Vol. 37, No. 1 (October 1983), pp. 79-91.

Borjas found that education accounted for 6.6 percent of earnings and that job tenure accounted for approximately 56 percent. He also found that among male and female employees similar on the above characteristics, male employees earned an average of 26.7 percent more than female employees. Therefore, the gender of federal employees was found to be a strong predictor of earnings. Lastly, Borjas found that the effect of the various human capital characteristics and gender on earnings varied among the different agencies.

The second study by Borjas (1983) produced results similar to the first study. He found that:

--significant wage differentials existed in the federal government between men and women possessing similar human capital characteristics;

--white men earned approximately 22 to 27 percent more than all women;

--the wage gap differed on an agency-by-agency basis.

This study also found that the intermittent labor force participation of women could explain 25 percent, at most, of the federal sector wage gap.

Borjas thus suggested that future analyses of the federal sector focus on discrimination within individual agencies and/or the differences among agencies. A 1979 study (Taylor)[14] generated results similar to those of the Borjas studies. Taylor included the following characteristics in her analysis: education, supervisory status, federal labor force experience, veteran status, region, and several broad occupational groups including professional, technical, administrative, and clerical personnel. This study found that a wage gap existed between men and women, even after accounting for education, supervisory status, federal labor force experience, veteran status, and region. It also found that job structures in the federal government differed for female- and minority-dominated occupations, as compared to male-dominated occupations.

---

[14] Patricia A. Taylor, "Income Inequality in the Federal Civilian Government," American Sociological Review, 44 (June 1979), pp. 468-79.

Other studies have focused on a single federal agency--the Postal Service. For example, one study[15] compared the earnings of female postal workers to the earnings of white male postal workers, after taking into account human capital and labor market differences. The results showed the wages of women and nonwhite postal workers to be similar to the wages of white male postal workers. The authors concluded, therefore, that wage comparability existed in the Postal Service.

Although there have been few economic analyses of male-female wage differentials in the federal government, those which have been done have yielded results somewhat similar to private sector study results. That is, economists generally have found it possible to attribute a portion of the wage gap to factors other than discrimination. Accordingly, it may be appropriate to include economic analysis in any study of sex-based wage discrimination in the federal government.

GENERAL STEPS IN CONDUCTING AN ECONOMIC STUDY AT THE FEDERAL LEVEL

As is suggested by the previous sections of this chapter, an economic study of the federal pay and classification systems could take a variety of forms. For example, the human capital, occupational, and institutional approaches rely on different theories and models to explain wage differentials. They also differ on such critical components as the usefulness of a particular model, the variables to include in that model, the timeframes the model should cover, and the interpretation of results. Despite these differences, the general steps in any economic study at the federal level should include:

--developing and articulating a specific goal;

--deciding which pay and classification systems and employees should be included;

--determining what employee data is necessary and how to gather the data; and

--determining the study design and the statistical techniques to use.

---

[15] Martin Asher and Joel Popkin, "The Effect of Gender and Race Differentials on Public-Private Wage Comparisons: A Study of Postal Workers," Industrial and Labor Relations Review, 38 (October 1984), pp. 26 to 35.

Each of these general steps is discussed below, as well as policy decisions that must be made as part of any economics-based study of federal pay differentials. Technical difficulties which might be encountered are also highlighted. The steps discussed clearly are not exhaustive, as other issues may surface during the course of the study. Also, the discussion is necessarily general because of the number of policy decisions which must be made. Finally, the steps are interrelated and may be carried out at the same time or in some other order.

An economic analysis may need to take into account, and perhaps will be guided by, existing pay and classification statutes. Each of these statutes establishes pay and classification principles for certain agencies and employees and excludes certain others. Study designs which cut across statutory lines need to take into account the differences in those systems and statutes.

I. Developing and articulating a specific goal.

The first step that should be taken by Congress or its designee involves specifying a goal for the study, since that goal will significantly affect all subsequent steps. Clearly, a wide range of options is available in setting a goal for the study. For example, one goal could be to determine whether and, if so, to what extent the wage gap could be explained by identifiable factors other than discrimination. The analysis might focus on some aspects of the human capital, occupational and institutional characteristics not presumed to be discriminatory to explain wage differentials. Regardless of which goal or set of goals is chosen, the objectives should be as specific as possible to ensure that they can be used to guide subsequent steps.

II. Deciding which pay and classification systems and employees should be included.

Once the goal of the study is agreed upon, the next step in the process is deciding which pay and classification systems and employees should be included in the study. As noted in chapter 1, there are over 60 pay and classification systems in the federal government, some with different pay premises and different statutory authorities (e.g., rank-in-person versus rank-in position systems). Several general coverage options for the study exist, each with certain advantages and disadvantages. Some of the major options include (1) all pay and classification systems (i.e., both rank-in-person and rank-in-position systems); (2) rank-in-position systems only; (3) the GS and FWS systems only; or (4) the GS system only.

The decision as to the coverage of the study might be guided by the need to include as many employees and agencies as possible without crossing multiple statutory boundaries. A study of all federal pay systems or all rank-in-person systems would be broad in scope, but implementation of the results would require changes to numerous statutes governing those systems. In contrast, a study concentrating only on GS employees would be confined to a single statute, but would be very narrow, covering only white-collar employees. On the other hand, a study focusing on the GS and FWS rank-in-position systems would cover 83 percent of full-time federal employees (outside the Postal Service) in white- and blue-collar occupations across most agencies. And, only two pay and classification statutes would be involved.

Once the pay and classification systems the study will encompass have been selected, a decision must then be made as to whether the federal agencies covered by the selected system should be viewed as a single employer or whether each agency should be viewed as a separate employer. Current pay and classification statutes usually require consistency in pay administration within the boundaries of their authority. For example, under the Pay and Classification Act of 1949, OPM is required to write classification and qualification standards to ensure consistency in pay administration for all positions and employees in the General Schedule. However, despite these statutory requirements, several studies have indicated that different agencies may be paying the same type of occupations and employees differently because of variations in the way the jobs are classified.[16]

Study designers should, therefore, consider whether the federal government should be considered as a whole or if the study should attempt to note any differences among agencies. This decision can have major practical and theoretical implications for other steps in the study. For example, data gathering could be much more difficult if each agency were viewed as a separate employer. However, if wage disparities occur in certain agencies more so than in others, remedies for those disparities could be more effectively focused if agency-specific information were available.

III. Determining which employee data is necessary and how to gather the data.

The human capital, occupational, and institutional economic approaches require detailed information on job incumbents, occupational distribution patterns, and/or institutional variations. Human capital data needed in a federal study includes information on male and female employees' education, training, work experience, and continuity of work force participation. Occupational and institutional data might include information such as geographic location and union membership.

---

[16] Classification of Federal White Collar Jobs Should be Better Controlled, (GAO/FPCD-75-173, Dec. 4 1975); U.S. Civil Service Commission, "Report on the Study of Classification Accuracy in GS Grade Levels 12 through 15", December 1974.

Some difficulties in gathering and using this information should be anticipated. Although OPM has some data on federal employees, other data exists only at the agency level. Further, some of the data needed for an economic study of federal pay and classification systems might not be available at either level.

If the data needed for an economic study is not available from either OPM or the agencies, a survey of selected employees could be conducted to gather that information. Several survey- and sampling-related issues would then have to be addressed. For example, if each agency is viewed as a separate employer, the sample size would need to be much larger and stratified by agency. Also, the sample would need to be randomly selected and of sufficient size to allow an acceptable level of statistical confidence.

Other information may be available, but may not be accurate, consistent in format, or sufficient enough in detail to allow the analysis to proceed. For example, an occupational characteristics study might require extensive information on the differences between various occupations in the federal government, but the available data may not be detailed enough to allow such an analysis.

An even more basic data issue that might be addressed is whether the variables commonly used in economic studies validly measure the theoretical concepts underlying the approach. For example, human capital theory uses worker characteristics as proxies for productivity to explain wage differentials. The proxies often are measured by such variables as education and length of work experience. Study designers might consider whether these variables adequately capture the productivity of individuals or whether other variables should be used.

IV. Determining the study design and the statistical techniques to use

The methodological design of the study and the possible statistical technique chosen will depend upon the questions the research is attempting to answer and the type of data to be analyzed. Decisions regarding the design and the statistical techniques used will affect the type of results the study produces.

For example, one design issue is whether the study will look at employees over the course of their entire federal careers or at only one point in time. If the analysis focuses on entire careers, longitudinal data and techniques will be required. This type of analysis will be able to explore the question of whether wage differentials are partially the result of different career paths or promotional patterns. A study focusing on one point in time will not be able to address this possible explanation for male-female wage differentials.

Decisions will also have to be made concerning the specific statistical equations to be used. Statistical equations recognize certain factors that influence wages and relate these factors to wage rates. These factors and relationships may be specified in a variety of ways. A technical panel might be formed to reach agreement on both the appropriate statistical equations and design issues.

CHAPTER 3

THE JOB CONTENT APPROACH TO PAY EQUITY STUDIES

The job content approach is another way in which sex-based wage differentials can be examined. In examining those differentials, though, job content studies focus on the characteristics of jobs, not job incumbents or the workplace as in economic studies. The approach uses a technique called job evaluation to analyze the value of jobs to an employer and to identify pay differences between comparably-valued male- and female-dominated job classes. In this chapter, we will:

- --describe job evaluation techniques and how they have been used extensively to set wages,
- --describe the job content approach and the advantages and disadvantages of the approach in general,
- --note two methodological options available under this approach and the advantages and disadvantage of each,
- --provide examples of each method as used in state studies and related follow-up activities, and
- --present a general methodology for carrying out a job content study in the federal government.

JOB EVALUATION IS USED EXTENSIVELY IN SETTING PAY RATES

Job evaluation is a formal procedure for hierarchically ordering a set of jobs in terms of their value or worth, usually in order to establish pay rates. When used in setting those rates, it assumes that jobs should be paid based on their worth to the organization; that it is the job and not the individual worker that is evaluated; and that job worth can be accurately measured.

Job evaluation has been used extensively in setting wages in both public and private organizations. A form of job evaluation has been used to set pay in the federal government for over a hundred years. Currently, about three-fourths of large public and private sector organizations in the United States use job evaluation in their pay setting process.

Four general types or methods of job evaluation are often described in the personnel and compensation literature: the ranking, grade description, factor comparison, and point factor methods.[1] Of these, the point factor method is most commonly used by major public and private sector organizations, and its popularity in state governments is increasing. It is also generally considered to be the most understandable and least subjective of the four approaches.[2] Because of its general acceptance as a means of measuring job content, the remainder of this chapter will focus on the point factor evaluation method.

In point factor evaluation systems, a set of factors is selected which reflect what the organization believes is important in valuing work. These are often referred to as "compensable factors," and are commonly variants of skill, effort, responsibility, and working conditions. A total point value or "weight" is assigned to each factor based on its relative importance to the organization. Each factor may then be divided into subfactors and each subfactor divided into levels of performance with varying point levels. For example, one factor may be "skill," worth a total of 100 points. Skill subfactors may be technical skill (with possible scores ranging from zero to 50 points), managerial skill (zero to 30 points), and human relations skill (zero to 20 points). A job is evaluated on each factor and subfactor and the total number of points becomes its job worth score. Within the context of the point factor approach, a variety of evaluation techniques can be used to set pay for a position or to study an organization's pay system. (Two general categories of such studies are discussed later in this chapter.)

Although job evaluation techniques are often contrasted with market-based approaches in determining pay for a position, market considerations play a role in most job evaluation systems. The factor weights in commercially-available evaluation systems are often developed on the basis of what the market pays for a given job content characteristic. The number of points a job receives in the evaluation process is commonly compared to the salaries of similar jobs in the relevant labor market to establish pay for that organization. Pay equity studies using job evaluations do, however, attempt to incorporate adjustments that are intended to remove any bias from the evaluation plan. (See page 35 of this report for two examples of this process.)

---

[1] For a more complete discussion of these methods, see pp. 3 to 5 in Description of Selected Systems for Classifying Federal Civilian Positions and Personnel, (GAO/GGD-84-90, July 13, 1984).

[2] Donald J. Treiman, Job Evaluation: An Analytic Review, Washington, D.C., National Academy of Sciences, 1979, pp. 2-4; Stephen McConomy and Bill Ganschinietz, "Trends in Job Evaluation Practices of State Personnel Systems: 1981 Survey Findings," Public Personnel Management, 12, Spring 1983, pp.1-12.

THE JOB CONTENT APPROACH

Using job evaluation, the job content approach to analyzing sex-based wage disparities attempts to determine the relative value of jobs to an employer and to identify any differences in pay between comparably valued male- and female-dominated job classes. The approach assumes that all jobs of equal value to an employer should be paid the same. Pay equity advocates contend, however, that jobs predominately occupied by women are not paid as much as equally valuable male-dominated jobs. By carefully studying the jobs and accurately determining their worth within an organization, they argue that the amount of that differential can be identified and corrected.

Available information indicates that all pay equity studies have used the job content approach and that all such studies have used point factor job evaluation methods. Also, all have followed a similar methodology.

--First, because it is not usually feasible to analyze all jobs within an organization, a decision is made on key or benchmark jobs to include in the study.

--Second, compensable factors and factor weights are selected and a scoring system is developed from which a total job worth score can be derived. The factors and their weights should represent features of the jobs which are legitimate bases for pay differentials.

--Third, the jobs to be evaluated are analyzed and all relevant job information is recorded in position descriptions.

--Fourth, the resultant job information is used in the organization's job evaluation process to determine the relative worth or value of the jobs in question. Each job is evaluated on each factor and a total score derived from the sum of the factor scores. As a result, the evaluated worth of each job to the organization is represented by a point score.

--Fifth, the average salaries of similarly evaluated male- and female-dominated jobs are compared. For example, the average salary of a male-dominated job evaluated at 500 points is compared to the average salary of a female-dominated job also evaluated of 500 points. Any difference in salaries is noted, and may be due to legitimate or illegitimate factors. Average salary may be measured in terms of incumbent's actual pay, grade assignments of the jobs, or in some other manner.

In many of the pay equity studies conducted by the states, a steering committee was established to help plan the study and resolve any problems that arose during implementation. The committee might decide which jobs will be studied, what methods will be used to analyze and evaluate the jobs, and the role of consultants in the evaluation process. A variety of affected interests are often represented on such committees, including management, employee organizations, women's groups, legislative bodies, and the private sector.

The participants in a job content study can vary widely depending on how the study is designed. The study can be conducted solely by consultants, by in-house pay and classification specialists, or by a combination of consultants and in-house specialists. Use of a combination of consultants and in-house personnel can provide both the technical expertise and the institutional knowledge needed for accurate job measurement. Similarly, job incumbents may be involved at a variety of stages during the study and in a variety of ways. Job incumbents may be represented on a steering committee, they may be participants in the actual analysis and evaluation of the jobs, or they may play no role at all. However, involvement of job incumbents is often viewed as important to the accurate description and evaluation of the jobs and in gaining acceptance of the study results.

Advantages and disadvantages of the job content approach

One advantage of using the job content approach to analyze sex-based wage differences is that it directly addresses the issue of comparable worth--whether jobs of equal value are being paid equally. While other methods may be used to study pay differentials between men and women, the job content approach is the only method which attempts to assess the worth or value of a job to an organization and analyze pay in relation to that evaluated worth. The point factor job evaluation method also has advantages over other types of job evaluation methods. For example, such an approach can:

--allow the analyst to use numerical indicators of job worth in making direct comparisons between jobs;

--minimize the degree of inconsistency and bias in a pay system by using explicit and clearly defined factors and factor weights; and

--permit flexibility in critical areas such as factor selection and factor scales, thereby facilitating management and employee acceptance of the results.

One disadvantage of the job content approach relates to the interpretation of results. In some studies, any wage differences between comparably evaluated male- and female-dominated occupations is presumed to be the result of discrimination and thus should be eliminated. However, as discussed in Chapter 2, other explanations may exist for differences in salaries between men and women which may not be captured by the job content approach.

Other disadvantages of the approach center on the ability of the job evaluation process to measure the worth of the jobs being studied. In its 1981 report, Women, Work, and Wages,[3] the National Academy of Sciences noted that several features of existing evaluation systems make them "less than optimal" to resolve pay disputes: (1) factors and factor weights may be biased or may be chosen to replicate the existing wage structure, and therefore cannot be used to assess the possibility of bias in existing pay rates; (2) the entire evaluation process is inherently subjective and therefore may reflect cultural stereotypes about the value of work traditionally done by men and women; (3) the use of more than one evaluation plan within an organization for different sectors of the workforce (e.g., white collar, blue collar, clerical, technical, and professional employees) restricts comparisons between jobs in those sectors; and (4) potentially serious technical shortcomings in the use of statistical procedures to determine factors and factor weights. For example, if certain variables are improperly measured, their importance in the statistical equation will be misstated.

Other criticisms of this approach have focused on:[4]

--the use of evaluation factors which measure the same job dimensions, thereby overweighting those dimensions;

--issues involving the administration of the evaluation system, such as the representativeness of analysis and evaluation committees; and

---

[3] Donald J. Treiman and Heidi I. Hartmann, editors, Washington D.C., National Academy Press, 1981.

[4] Howard Risher, "Job Evaluation: Problems and Prospects," Personnel, 61, January-February 1984, pp. 53-66; George T. Milkovich and Charles J. Cogill, "Measurement as an Issue in Analysis and Evaluating of Jobs," in Handbook of Wage and Salary Administration, 2nd edition, Milton Rock, editor-in-chief, New York, McGraw-Hill, 1984, pp. 10/1-10/14; David Thompson, "Eliminating Pay Discrimination Caused by Job Evaluation," Personnel, 55, September-October 1978, pp. 11-22; Richard W. Beatty and James R. Beatty, "Some Problems with Contemporary Job Evaluation Systems," in Comparable Worth and Wage Discrimination: Technical Possibilities and Political Realities, edited by Helen Remick, Philadelphia, Temple University Press, 1984, pp. 59-78.

--the reliability and validity of the job descriptions and evaluation scores.

Reliability refers to the consistency of the results obtained through the evaluation process. If different job analysts or job evaluators using the same system on the same jobs come to different conclusions regarding the relevant aspects of the jobs or their worth to an organization, the system of analysis and evaluation is not considered reliable. Validity refers to the accuracy of the job descriptions and evaluation scores, particularly whether they are measuring what they purport to measure. A valid system will be one in which the job descriptions accurately capture all compensable job aspects and the job evaluation scores accurately reflect the jobs' true worth to the organization. The validity of an evaluation system is difficult to gauge due to the lack of generally accepted criteria of job worth.

Despite these possible shortcomings, the National Academy and other analysts[5] have cautiously endorsed the use of job evaluations to study wage differentials based on sex. The National Academy noted that job evaluation plans "do provide a systematic method of comparing jobs to determine whether they are fairly compensated," and that the use of job evaluation scores to determine pay rates "will generally go some way toward reducing discriminatory differences in pay when they exist."

Many of the criticisms of job evaluation have focused on the way the evaluation process has been used, not as it is theoretically possible to use. A number of suggestions have been offered to improve such systems, including:[6]

--extensive job analysis using multiple methods (e.g., job content questionnaires, interviews, and observation) and involving a variety of sources (e.g., job incumbents, their supervisors, and job analysts) before attempting to determine job worth;

--periodic review and updating of job descriptions and specifications to ensure accuracy and relevancy;

--use of compensable factors that are not redundant and represent the value of jobs to the organization;

---

[5] Treiman and Hartmann, p. 81; Beatty and Beatty, p. 76; Helen Remick, "Major Issues in a priori Applications," in Remick, pp. 99-117.

[6] Beatty and Beatty, p.76; Thompson, p. 21.

--use of weighting schemes which do not simply replicate existing wage hierarchies;

--use of only one evaluation plan for all employees; and

--testing the evaluation system for reliability and validity before full implementation.

POINT FACTOR METHODOLOGICAL OPTIONS

Most of the differences in methods of conducting a job content analysis may be traced to the approach's central feature--job evaluation. Two general evaluation strategies are available: (1) an "a priori" method in which factors and factor weights believed relevant to the organization are established before initiating the evaluation process; and (2) a "policy-capturing" method, in which factors and factor weights are analytically developed as part of the evaluation process to replicate the organization's existing pay system. Each of these methods has certain advantages and disadvantages and each may be modified in a variety of ways. However, many evaluation systems and job content studies fall somewhere between these two evaluation options, incorporating both policy-capturing and a priori features.

The a priori method

In the a priori method, factors and factor weights are selected based upon what are believed to be appropriate measures of job worth in that organization. This may be done by adopting a commercially-available evaluation system or by choosing factors and factor weights which are specific to the organization. As previously mentioned, the factor weights in commercially available a priori systems are commonly developed on the basis of what the market pays for a given job characteristic. The factors selected typically define job worth in terms of skill, effort, responsibility, and working conditions. For example, the Hay Associates' evaluation plan, the most widely used a priori method, employs four factor groupings: know-how, problem solving, accountability, and, when appropriate, working conditions. The Norman D. Willis and Associates' plan, used in Washington State and other locations, also has four factor groupings: knowledge and skills, mental demands, accountability, and, when appropriate, working conditions. In some plans, such as the Hay and Willis plans, these factors, subfactors, and point levels are graphically illustrated in "guide-charts." No overall standard of validity exists for a priori evaluation systems. However, a number of commercially-available a priori systems produce similar results.

The principal advantages of the a priori method are that it is relatively easy to use and that explicit criteria of job worth are clearly established before any evaluations are conducted. In the case of commercially-available systems, the reputation of the system is usually well known, thereby allowing those involved in selecting the evaluation approach and those affected by that decision to have more information on which to judge the adequacy of the system than is available in non-commercial systems. A priori systems may also be more understandable and explainable than policy-capturing approaches, which rely on sophisticated statistical techniques to derive factor weights.

The principal disadvantage of this method is that, unless carefully selected, the factors, factor weights, and the terms used to describe the factors in commercially-available systems may be out of line with the job features that an organization wants to value. The factors which are appropriate in one organization may be inappropriate in another. In addition, such systems may incorporate bias in the way in which the factor scores are derived. For example, the factors may over-measure (and therefore over-value) characteristics traditionally found in male-dominated jobs such as physical effort or exertion, and fail to measure features common in female-dominated jobs, such as fine motor skills.

Because of the need for a close fit between the evaluation method and organizational needs, a priori evaluation systems are sometimes modified to measure job worth in different organizations more accurately. These modifications can include addition or deletion of certain factors or subfactors, use of different words to describe the factors, or similar alterations to established systems.

The state of Washington used an a priori approach in its 1974 pay equity study. The state used the Willis job evaluation system to compare the value of male- and female-dominated occupations and to determine whether any pay disparities existed between them. A 10-member advisory committee representing interests affected by the study was appointed by the governor to provide advice and to monitor the study process. The following procedure was used:

--First, 121 male- and female-dominated job classes were selected for study from the 3,000 job classes in the state and the higher education civil service systems.

--Second, position questionnaires were sent to a sample of 1,600 employees in the target occupations and approximately half of these employees were interviewed in an effort to obtain accurate job information. Two to four questionnaires considered representative of each job class were then used as the basis for the evaluations.

--Third, the Willis point-factor evaluation system was used to measure the value of each of the 121 job classifications.

--Fourth, the monthly salaries of comparably-evaluated male- and female-dominated classifications were compared. Monthly salary was measured by the arithmetic average of the lowest and highest step in the salary range for each classification.

Other states which have used an a priori job content approach to study sex-based wage differences include Minnesota, Connecticut, Oregon, and Vermont.

The policy-capturing method

In the policy-capturing evaluation method, factors and factor weights are developed using the organization's existing pay structure as the criterion of worth. Typically, a set of factors and subfactors that is believed to be related to the worth of the jobs being evaluated are selected. The jobs being studied are then scored on each factor, sometimes using extensive job content questionnaires. The jobs' factor scores are then statistically analyzed through regression analysis, and those factors found most strongly predictive of current salaries are most heavily weighted. Once the weights are established, all jobs selected for study are evaluated and a total point score is derived for each job.

One advantage of the policy-capturing method is that it is specific to the organization that uses it and makes explicit what that organization values in its jobs. Also, because the desired outcome of the approach is a replication of the organization's existing wage structure, the resultant pay scale will not disrupt the organization's compensation system.

The principal disadvantage of the policy-capturing approach in a study of sex-based wage disparities is that, without modification, it will not reveal any differences between the evaluated worth of a job and its current salary. The evaluation system will produce point scores consistent with existing pay, thereby capturing any bias that may already exist. As the National Academy of Sciences noted, such systems "can hardly serve as an independent standard against which to assess the possibility of bias in existing pay rates."[7]

To use a policy-capturing approach in a study of sex-based wage disparities, the approach must be adjusted for possible bias. In its report, the National Academy of Sciences cited two modifications to policy-capturing evaluation approaches which may be used to reduce bias in existing job evaluation plans, to develop new bias-free plans, and to identify specific instances of pay discrimination.[8] The first modification is a statistical technique which attempts to determine what the pay for female-dominated jobs would be if there were no discrimination. When the preliminary factor scores are statistically analyzed, another factor--the percent of job incumbents which are female--is added to the equation. This technique allows the analyst to determine whether the existing system is biased or not and, if so, to correct that bias when setting factor weights.

---

[7] Treiman and Hartmann, p. 81.

The second modification is similar to the first in that it attempts to determine what pay for female-dominated positions would be if there were no discrimination. In this technique, the criterion of job worth is not the pay for all positions in the organization, but rather the pay in jobs held by white males. The underlying assumption is that white males do not suffer from discrimination, so using their salaries as the criterion would eliminate bias and bring pay for equally evaluated female-dominated jobs in line with pay for male-dominated jobs.

New York State is conducting a pay equity study which employs a policy-capturing approach adjusted for bias using both modifications cited above. The state government and the New York Civil Service Employees Association requested the State University of New York's Center for Women in Government to examine the effects of sex and race segregation on salary administration in the system as a whole and in each job title. The study began in June 1983 and is expected to be completed in September 1985. The general methodology is:

--First, a customized 112 item job analysis questionnaire was developed using sex-neutral language and attempting to measure all relevant job characteristics, including those commonly associated with female- and minority-dominated occupations.

--Second, the job content questionnaire was administered to a geographically dispersed population of approximately 36,500 employees across 2,900 job titles.

--Third, once the results of the survey are compiled, a compensation model will be developed which will statistically determine which factors are most relevant in establishing current wages paid for jobs in the state employment system.

---

[8] Ibid, pp. 82-89.

--Fourth, the resultant model will be statistically adjusted using both the male pay criteria and the "percent-female" modifications described above. Similar adjustments will also be made for minority-dominated positions.

New York is the only state known to have used a policy-capturing approach to assess wage disparities in sex-dominated and minority-dominated jobs. A 1980 pilot study in Pennsylvania, however, employed a somewhat similar methodology. That study was conducted at the request of the American Federation of State, County and Municipal Employees (AFSCME) by a team of Temple University researchers. Although the study documented a difference in wages between comparably evaluated male- and female-dominated occupations, study results have not been used in collective bargaining or pay setting.

RESULTS OF PAY EQUITY STUDIES IN STATE AND LOCAL GOVERNMENTS

Several state and local governments have conducted a priori job content studies and have increased or begun to increase compensation for jobs found to be underpaid in relation to their evaluated worth. Three states and two local governments which have done so are discussed in this section: Washington; Connecticut; Minnesota; San Jose, California; and Colorado Springs, Colorado. Several other states have made similar pay adjustments as part of general reviews of their pay and classification systems, but without conducting a pay equity study. (See map on p. 3 and app. II for a full description of state pay equity activities.)

Washington State

As noted previously a job content study was conducted by the consulting firm of Willis and Associates in the State of Washington in 1974. That study indicated that female-dominated occupations were paid an average of about 20 percent less than comparably evaluated male-dominated jobs in the state civil service. The state made no salary adjustments at that time, but did order further job evaluation studies in 1976 and 1980. At one point in 1977, the state governor requested a $7 million appropriation to begin raising women's pay levels. But a newly-elected governor subsequently eliminated that request from the proposed state budget.

In 1982, AFSCME and others filed suit in federal district court charging the state with violating state and federal civil rights laws, including title VII of the 1964 Civil Rights Act, in the implementation and application of its compensation system. Shortly before the case began in 1983, the state legislature passed legislation which committed the state to the concept of pay equity, required full implementation of comparable worth within 10 years, and began the process of making pay adjustments based upon the job evaluation system results. Initial adjustments were limited to $100 annually per incumbent in jobs determined to be at least 20 percent underpaid.

Despite these changes, the federal district court ruled in 1983 that the state had violated title VII and was guilty of "direct, overt and institutionalized" wage discrimination. The court ordered the state to remedy the pay disparity between male- and female-dominated job classes and awarded back pay to September 1979. The state has appealed the district court ruling and arguments are expected in the federal circuit court this year.

Connecticut

A pilot pay equity study similar to the Washington State study was conducted by Willis and Associates in 1980 for the state of Connecticut. The study revealed a pay gap (8-19 percent) between similarly evaluated male- and female-dominated jobs in the classified state service. In 1981, the state legislature authorized a full-scale classification and evaluation effort using the Willis job evaluation system. The study is currently scheduled for completion in 1986.

In the study, jobs are generally being analyzed and evaluated one bargaining unit at a time. Once all jobs within a unit which collectively bargain are evaluated, the state and the union negotiate the point-pay relationship (i.e., how many points are required for placement in each salary grade) and the result of those negotiations are approved or disapproved by the legislature. The state's position in those negotiations is established through regression analysis of the evaluation results and local market rates. If the unit does not collectively bargain, the point pay relationship indicated by the regression analysis is approved or disapproved by the State's Office of Policy and Management. As of February 1985, 4 of the state's 11 bargaining units covered by the job evaluation system had been classified and evaluated and 2 units' pay adjustments had been implemented.

Minnesota

A task force established in 1981 by an advisory council to the Minnesota state legislature conducted a pay equity study of the state classified service using the Hay Associates point-factor guide chart method of job evaluation. The study documented salary disparities between comparably evaluated male- and female-dominated job classes and recommended that the legislature appropriate funds to eliminate the disparities. The estimated 1-year cost for full implementation of pay equity was about 4 percent of the state payroll.

In response to the study, the state legislature amended the state personnel law to establish a pay equity policy for employees in the executive branch and a procedure for making pay equity adjustments. The law requires the Commissioner of Employee Relations to submit to the Legislative Commission on Employee Relations a list of job classes which the job evaluation study indicates are inequitably paid and an estimate of the costs to equalize pay in those classes. The Commission then recommends an amount to be appropriated for those wage adjustments to the House Appropriations and Senate Finance Committees. Appropriated funds go directly to the various bargaining units based on the number of underpaid classes they represent, and may be used only for pay equity adjustments. Distribution of salary increases within each bargaining unit is negotiated through the collective bargaining process. In January 1983, the state legislature approved a biennial appropriation of $21.8 million for pay equity adjustments. If a similar amount is appropriated at the start of the 1985 legislative session, pay equity will have been implemented within 4 years from the time the first adjustments were authorized.

In 1984, the Minnesota legislature extended the state's pay equity policy to its local governments. The law requires each unit of local government (cities, counties, school districts, and other jurisdictions) to develop a job evaluation system, conduct a pay equity study, begin implementation of pay equity, and report their progress to the Department of Employee Relations by October 1985. Results of the local job evaluations are defined as private data for 3 years and may not be used as evidence of discrimination under state law during this period.

San Jose

In 1978, AFSCME requested that the city of San Jose conduct a study comparing the pay of male- and female-dominated nonmanagement job classes in the city. The Hay Associates' evaluation system had been adopted earlier that year to revise the pay structure for the city's management employees and gave rise to the union's request for a study of nonmanagement classes. The city council agreed, but it stipulated that the city would not be obligated to set pay based on the results of the study.

The study concluded that female-dominated job classes were paid less than comparably evaluated male-dominated classes. In May of 1981, the city began negotiations with AFSCME over the results of the study, but those negotiations stalemated and the union went on strike on July 5, 1981, when the existing contract expired. On July 14, 1981, an agreement was signed by the city and the union authorizing general salary increases and setting aside $1.45 million for "special equity adjustments" for female-dominated classes which the study found to be underpaid. The current collective bargaining agreement provides that the city will no longer make such adjustments after 1986.

Colorado Springs

In 1980, the Colorado Springs city council passed an ordinance requiring internal equity in the pay system used for city employees. The Hay evaluation system was adopted as a means of determining job worth and achieving that internal equity. However, in October of that year, clerical employees formed an association and filed a formal grievance with the city council contesting the administration of the evaluation system's results. The clerical employees maintained that the city's salary setting practices, particularly the use of local wage rates to set their pay, resulted in lower pay for their work than comparably-valued male-dominated jobs whose pay was set using the Denver market. The city council agreed with the clerical workers and ordered pay adjustments to be made over a 4-year period.

Although the city council believed that clerical pay should be increased, the city manager suggested that not all of the difference between equally evaluated male- and female-dominated jobs was due to discrimination. He decided, and the parties mutually agreed, that the comparability adjustments would compensate the clerical employees for 80 percent of the difference between their current pay rate and that of comparably evaluated male-dominated jobs. The adjustments, which began in 1982, are estimated to cost $1.8 million over 4 years.

GENERAL STEPS IN CONDUCTING A JOB CONTENT STUDY AT THE FEDERAL LEVEL

The preceding discussion of the job content approach and its use in state pay equity studies suggests several general steps that should be followed in applying this approach to a federal pay equity study. They include:

--developing and articulating a specific goal;

--deciding which pay systems and jobs should be included;

--selecting a job evaluation method;

--deciding on methods for job documentation;

--deciding how the evaluation method should be implemented; and

--determining what methods should be used to compare the pay of male- and female-dominated jobs.

In the last session of Congress, legislation was introduced which called for a pay equity study of the federal pay and classification system (H.R. 5680). The study steps described in the House Committee Report on that legislation are similar in many respects to the job content steps described below. (See pp. 58 and 59 for a discussion of those steps.) For example, both provide for use of job content questionnaires to gather needed information, use of job evaluation procedures to determine the value of the jobs to the federal government, and for testing the results of the evaluation process against the current pay system.

I. Developing and articulating a specific goal

A job content study at the federal level could have a variety of goals. And, depending on the goal or goals selected, each of the subsequent steps would vary accordingly. Therefore, as the first step in the process, the Congress or its designee should specify a goal or set of goals for a job content study of the federal government. The goal or goals should be as specific as possible to avoid misinterpretation, and could be part of a statement of policy from which subsequent decisions could be made.

As in the economic approach, some goals would be more difficult to achieve than others. If the measurement of sex-based wage discrimination is selected as the goal, study designers would, again, have to define "discrimination." Alternatively, as some states have done, the study could focus on ways to develop and implement a methodologically correct and bias-free job evaluation system across all executive branch agencies. This approach would avoid the need to make assumptions about wage discrimination while seeking to achieve more equitable pay and classification results. However, if this goal is selected, those in charge of such a study would still have to determine what constitutes a "methodologically correct and bias-free" evaluation system.

II. Deciding which pay systems and jobs should be included

Both the job content approach and the economic approach described in chapter 2 require early designation of the scope of the study, but in the job content approach it is the job and not the individual job incumbent which is measured. In both approaches, though, the first decision to be made in this step is the selection of the pay and classification systems which will be included in the study. Any or all of the over 60 pay systems can be included in the study. However, including a rank-in-person system would be appropriate only if it is recognized that the fundamental basis for pay in that system--the characteristics of incumbents--is being tested and may be changed by implementing an approach which measures job content.

As stated in chapter 2, focusing on the GS and FWS systems has several advantages, as they (1) are the two largest systems, covering most executive branch agencies and 83 percent of all full-time personnel in those agencies; (2) cover most white-collar and blue-collar occupations in the executive branch; (3) are both rank-in-position systems; and (4) are contained in only two pay statutes. If the GS and FWS systems are selected, the results will be applicable only to those two systems. Subsequent studies could be conducted to include other pay systems.

Once the pay systems the study will encompass are decided on, a related coverage decision involves the selection of the jobs within those systems to be studied. As noted in chapter 1, there are 441 occupational series in the GS pay system and 444 in the FWS system. However, each series can contain several distinct jobs. For example, a particular series may be divided by grade levels (e.g., grades 7, 9, 11, 12, 13, 14, and 15), each of which may denote substantially different jobs within that series. Thus, a job may be defined in terms of both its series and grade--e.g., a grade 7 secretary or a grade 12 economist. OPM refers to the series-grade definition as a "class," which includes all positions which are similar in subject-matter, level of difficulty, and qualifications. If the series-grade definition is not used, however, designation of discrete jobs may be difficult, as OPM said they do not require that agencies specify the types of different jobs used in any particular series.

After the appropriate unit of analysis--the job--has been defined, other criteria may then be employed to select jobs for the study. Common selection criteria in state pay equity studies are jobs which are male- or female-dominated (usually defined as being 70 percent or more of one sex),[9] highly populated, and representative of the range of jobs and salaries in the organization. Instead of selecting only male- or female-dominated jobs, however, study designees may wish to include some jobs which are balanced in sex-composition. To the extent possible, however, jobs with known classification problems (e.g., ambiguous or widely varying duties) should be excluded from the sample.

III. Selecting a job evaluation method

The discussion earlier in this chapter of the job content approach suggests two basic evaluation options for the federal study--an a priori method or a policy-capturing method. Within each method, other options and modifications are possible, each with certain advantages and disadvantages. The choice between these options is contingent upon the general goal of the study. If the goal is to measure job content in a manner different from the existing system, an a priori evaluation strategy should be used. If the goal is to represent current federal wage practices, a policy-capturing method should be used.

---

[9] The use of 70 percent male or female as the measure of sex domination in an occupation is simply traditional and is not statistically derived. Other measures may be used. For example, in the New York study, the percent female used is 1.4 times the average percent of females employed in all jobs.

Another option to be considered is using an existing point factor system such as the Factor Evaluation System (FES) method now used for certain GS positions. If used, though, FES must be modified as necessary to cover the chosen pay systems and occupations and to remove any methodological weaknesses or bias. Application of FES would represent a merger of a priori and policy-capturing methods. As used in a job content study, FES would qualify as an a priori system because factors and factor weights would be specified before any evaluations are conducted. Yet, FES was designed to replicate the existing GS grade structure, so its origins are in the policy-capturing method. FES is also relatively familiar to federal employees and has been used as a model for other evaluation systems and pay studies. Use of FES could have the effect of speeding study completion and keeping study costs down, particularly if in-house classification specialists accustomed to applying it are used in the job analysis and evaluation processes. Major modification of the existing system could, however, reduce the familiarity of FES to in-house specialists.

The choice of a particular evaluation method and the selection of appropriate factors and weights is also somewhat contingent upon the scope of the study. For example, different factors and weights may need to be used if the FES system, now used for nonsupervisory GS positions only, is extended to cover supervisory positions and/or positions in FWS. Generally, the broader the coverage of the study (e.g., all federal pay systems) the more difficult it will be to select and weight factors which will evaluate all jobs accurately. Regardless of which evaluation system is chosen, however, the factors and weights should be tested for bias and the reliability and validity of the results examined before being used in the study.[10]

---

[10] One way in which factors and weights may be tested for bias is through regression analysis. In this approach, each factor is analyzed to see whether it predicts the sex of the job incumbents. If so, the objectivity of the factor and its ability to predict wages is closely examined to determine whether it should be retained. The reliability and validity of evaluation results are discussed on p. 31.

IV. Deciding on methods for job documentation

The accuracy of the evaluation process depends on the accuracy of the job content information used in that process. That information may come from a variety of sources, including existing federal position descriptions and classifications, job content questionnaires, interviews with job incumbents and their supervisors, and/or observation of the job by analysts. A combination of information sources is often considered the best means of documenting relevant aspects of the jobs being studied.

If current position descriptions and classifications are used, however, care must be taken to ensure their accuracy. Previous OPM reports[11] indicate there are numerous problems with the accuracy of existing job documentation. Also, current federal job documentation procedures are not uniform across classification systems. That is, different information on jobs may be collected or the same information may be collected but recorded in a different format (e.g., narrative and FES standards within the GS system). Care must therefore be taken to assure consistency in existing job documentations.

If additional job information is needed, a sample of job incumbents and/or their supervisors could be surveyed with a job content questionnaire. This approach is particularly useful if quantitative job content information is required by the chosen evaluation method. The questionnaire should be designed to capture all relevant (i.e., compensable) job factors in an unbiased manner. The sample of incumbents to be surveyed must be carefully devised to ensure that the results are representative of the duties of all job incumbents. Each job sample should be randomly selected and of sufficient size to allow presentation of the data at an acceptable level of statistical confidence. The sample may also be stratified by agency, pay system, level of employee experience in the job, or in some other manner depending on how the results are to be used. As noted in chapter 2, agency-specific data can allow any subsequent actions to be more focused. Interviews with selected questionnaire respondents or observation of the job itself by analysts can also provide more detailed job information.

V. Deciding how the evaluation method could be implemented

Evaluations may be conducted by a single individual, several individuals acting separately, or a committee of evaluators. Those involved may be outside consultants, in-house classification experts, or job incumbents and/or their supervisors. The relevant literature and state pay equity experiences suggest that a combination of several groups operating as a committee may be the most reliable evaluation format.

---

[11] U.S. Civil Service Commission, Report on the Study of Classification Accuracy in GS Grade Levels 12 through 15, December 1974; U.S. Office of Personnel Management, A Report on Federal White-Collar Position Classification Accuracy, February 1983.

If a committee of evaluators is used, the experiences of prior studies indicate that the committee should be generally representative of the work force being evaluated (e.g., sex, race, union membership, and/or agency). Although it is unclear whether the composition of such committees affect the rankings of jobs, a representative committee can ensure that a variety of viewpoints are considered, thereby enhancing the acceptability of evaluation results. Committee members can be selected based upon any number of other criteria, including their understanding of the evaluation system, ability to apply a structured evaluation format, and willingness to participate in the process. All those selected should be thoroughly trained before any evaluations are conducted.

The role of consultants in the evaluation process can vary widely depending on the nature of the evaluation system selected. With commercially-available systems, for example, the consultants' role is more apt to be one of providing specific technical guidance on system components and proper system application. With internally-developed or revised systems, the consultants' role may extend to broad classification and evaluation guidance. In any case, the experiences of the states suggest that consultants are an important source of technical expertise and can help ensure consistency in the application of the evaluation instrument, but that actual evaluation of the jobs should be carried out by organization members familiar with the jobs being studied.

VI. Determining what methods should be used to compare the pay of male- and female-dominated positions

The final step in the study process involves comparing the pay of similarly evaluated male- and female-dominated occupations and determining whether any disparity exists. The measure of pay used in this step must be carefully chosen because different results can be obtained depending on which measure is used. For example, if the average pay for current incumbents is used, this figure will include factors other than job content which can influence an individual's pay in the federal pay and classification systems. These factors include seniority in the job, job performance, locality pay differences, and special rates for hard-to-fill positions. Incumbents of 500 point, male-dominated jobs may be justifiably paid more than incumbents of 500 point, female-dominated jobs. This would be the case if those incumbents have been in those positions a longer average period of time, work in an occupation paid on the basis of local prevailing rates, or possess some other factor deemed an appropriate basis for federal pay differentials.

Other measures of pay may be less susceptible to non-job content pay influences. If, for example, the minimum or mid-points of the jobs' grade assignments are compared, variables such as the seniority of incumbents in those positions will be controlled. This method would permit a clearer comparison of jobs on the basis of content than simply comparing the pay of job incumbents. However, if the GS and FWS system are the focus of the study, a standardized grade structure must be agreed on because grades are not equivalent in the two systems.

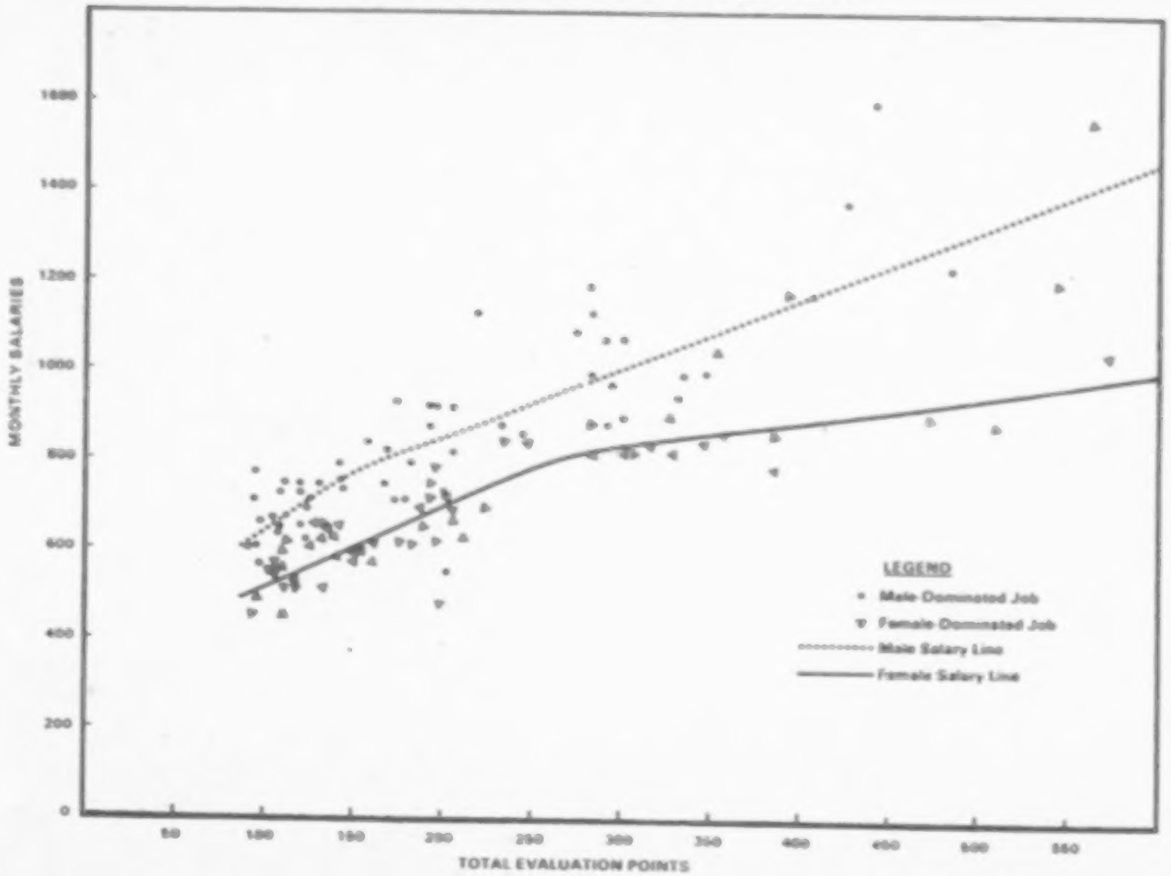
The comparison of evaluation points to pay for male- and female-dominated jobs may be illustrated in any number of ways. Perhaps the most easily understandable is a table in which the pay for similarly evaluated male- and female-dominated jobs is shown. The following table is an example of this technique, and is from the 1974 Willis study in Washington State. There, salaries were developed using the arithmetic average of the lowest and highest step in the salary range for each classification.

Men's and Women's Monthly Salaries for
Comparably-Evaluated Jobs
State of Washington - August 1974

Points	Men's Salary	Women's salary
100	$ 644	$516
150	776	604
200	852	692
300	1,005	826
450	1,235	913

Another approach is to plot the point/pay relationship graphically and show whether male- and female-dominated jobs are paid on the same statistical basis. If not, male- and female-dominated jobs will be in generally different positions on the chart and two pay lines will be evident. The following chart illustrates this technique, again from the 1974 Washington State pay equity study.

POINT/PAY INTERSECTS AND PAY LINES FOR MALE AND FEMALE OCCUPATIONS IN THE STATE OF WASHINGTON, AUGUST 1974



Source: Norman D. Willis and Associates

CHAPTER 4

SELECTING A STUDY APPROACH AND RELATED CONSIDERATIONS

The preceding chapters have provided background information on pay equity and discussed two potential approaches--economic and job content analysis--to study that issue in the federal government. This chapter compares the two methodologies and goes on to suggest that there is a third way in which to carry out such a study, i.e., through an approach which uses both economic and job content studies. A combination approach has been used on a sequential basis by the state of North Carolina and its experience to date is described. Also described are the efforts of several researchers who have sought to use both economic and job content factors simultaneously in an effort to explain wage differentials.

Regardless of which approach is selected, however, several related matters need to be resolved, such as designating who should carry out the study, determining costs, and establishing time frames. Those matters also are discussed in this chapter.

COMPARING ECONOMIC ANALYSIS TO THE JOB CONTENT APPROACH

As reported in chapter 2, economic analysis can take a variety of different forms, yet each form generally is characterized by a similar goal--to measure and explain, to the extent feasible, existing wage differentials. An economic analysis of wage differentials can yield useful insights into the relative importance of various factors which give rise to pay differences in the federal government. Such information provides one means for determining whether systemic changes are needed to deal with inappropriate wage differentials. Economic analysis alone, however, provides little guidance as to whether and, if so, to what extent the pay for any particular job ought to be adjusted. And, at least in part for this reason, economic analysis has not been used in the pay equity studies conducted by the states or private sector employers. Instead, these studies have invariably relied on the job content approach.

Whatever the specific methodology that may be employed, the job content approach seeks to develop a measure of the relative value of jobs--rather than individual employees--to an employer. The job content approach thus is another tool through which to gain insights into wage differentials. However, compared to economic analysis, job content analysis provides less insight into how pay inequities occurred.

In any case, both the economic analysis and job content approaches have some value as means for dealing with the issues of pay equity and wage disparities by sex. To this point, the two methods have been presented as separate, alternative design methodologies. And each has been shown to have different strengths--the latter as a useful means to identify specific pay disparities among employee groups and the former as a useful means to explain wage differentials and their causes. Given this, it may be both feasible and desirable to include both approaches within the broad context of a federal pay equity study.

USING BOTH ECONOMIC AND JOB CONTENT APPROACHES IN A FEDERAL PAY EQUITY STUDY

Both the economic and job content approaches may prove useful in explaining wage differentials by sex in the federal government. However, in our view, neither approach is sufficient by itself to explain the wage gap. The job content approach alone may fail to consider important human capital or institutional variables (e.g., seniority, training, or union contracts). Similarly, the characteristics of the jobs (e.g., the skill, effort, and responsibility required) may be ignored if only the characteristics of employees or the workplace are considered.

What is needed, then, is an approach in which the advantages of both the job content and economic approaches complement each other. Use of both approaches can provide a clearer understanding of how federal wages are set and would be less susceptible to charges that important explanatory variables have been ignored. Two ways in which this combined approach has been used--a sequential method and a simultaneous method--are discussed below.

The sequential method

In a sequential study, either the job content or the economic approach is used first and then the other type of analysis is conducted. After both studies are completed, the results are combined to illustrate the total explanatory effect of all variables. In this way, consideration is given to the characteristics of the jobs, job incumbents, and the workplace. However, the results of these analyses cannot be simply added together, because each approach may be measuring the same underlying concept. For example, the education of job incumbents may also be measured by the skill or knowledge required by the job itself. Therefore, to use both approaches in a complementary fashion, a data analysis method must be developed which will eliminate the possibility for double measurement of those variables.

Another problem with the sequential method involves differences in the format of results obtained under each approach. The product of the job content approach is usually a point score or pay differential between sets of male- and female-dominated jobs. In contrast, economic analysis commonly yields a statistical equation indicating the explanatory power of a set of variables. For the results to be directly comparable, a technique must be developed to combine the results of the two approaches in a common format.

A preliminary sequential study was conducted from 1980 to 1982 in the state of North Carolina. There, the Office of State Personnel first used human capital and institutional variables to examine wage disparities by race and sex in state employment. Four factors believed to affect wage differentials--age, education, length of service, and supervisory responsibility--were used in the study. The study found that:

--at every education level, white males had a salary advantage over all other subgroups (i.e., white females, black females, and black males);

--white males were more likely than any other subgroup to hold jobs requiring higher educational requirements than they actually possessed;

--increasing years of aggregate service were more highly rewarded for white males than any other subgroup;

--a statistical analysis which controlled for education, years of aggregate service, age, and supervisory responsibility indicated annual salary "penalties"[1] due to race or sex were $2,213 for black males, $2,529 for white females, and $3,271 for black females; and

--among officials and administrators and professional job categories, the controlled variables accounted for only one-third of the identified salary differential.

At the conclusion of the economic analysis, the Office of State Personnel used a type of job content analysis to determine whether equally evaluated jobs were being paid the same. Point factor ratings produced for the state governments of Idaho and Washington were matched to selected North Carolina job classes.[2] From these point factor ratings, comparisons in pay by race and sex were made. These comparisons showed that:

---

[1] The term "penalties" is a statistical comparison mechanism where one group is held constant as a standard for comparison. In this case, the group used as the standard for comparison was white males.

--Female-dominated jobs received an average of $27.48 per evaluation point, while male-dominated jobs returned $40.44 per point. Similar results were also obtained when substituting starting salaries for average salaries.

--Almost two-thirds of the job classes paying more than one standard deviation[3] above their evaluated worth had no female or black incumbents.

--Jobs paying one standard deviation below their evaluated worth were heavily dominated by females and blacks.

--Among equally evaluated job classes, the mean[4] salary of female-dominated positions was 78.8 percent of the mean salary of male-dominated positions.

In summary, using economic and job content analyses, the North Carolina study identified and examined differences in compensation by race and sex among state government employees. The 1982 study report concluded:

> "The considerable direct effects of race and sex (that is, those not transmitted through differences in educational levels, years of aggregate service, occupational placement or supervisory placement) indicate that other, perhaps, illegitimate sources of salary disparities are present."

In 1984, the North Carolina General Assembly appropriated $650,000 for a broader pay equity study. North Carolina has since contracted with a private consulting firm to: (1) conduct a comprehensive analysis of the State Personnel System to identify wage policies that inhibit pay equity; (2) install a quantitative job evaluation system which establishes the relative value or worth of state positions; and (3) develop a pay system which is objective, competitive, and equitable within and across all groups. A Pay Equity Advisory Committee, consisting of seven state senators and seven state representatives, was created to oversee the study.

---

[2] Due to uncertainties of this procedure, North Carolina qualifies the findings from this portion of the study as hypothetical in nature and unable to be generalized to North Carolina jobs as a whole.

[3] "Standard deviation" is a statistical term that measures the distribution of a given value relative to its mean.

[4] A "mean" salary refers to a statistical calculation of the average salary. Specifically, in this case, all salaries in dollars were added and divided by the number of employees who received that salary.

The simultaneous method

Another way to use both job content and economic approaches is to develop a study design which allows both to be done simultaneously. In that design, variables measuring characteristics of the job, job incumbents, and the workplace are considered together in a way which controls for overmeasurement and produces results in a common format. Data is gathered through a job content survey of a sample of employees, supplemented as necessary by other information. The data is then statistically analyzed and the results are used to indicate the percent of the wage gap explained by each of the variables included in the equation. If the data is collected properly, the statistical analysis could highlight the differences between each of the models and compare the results of each approach--job content alone, economics alone, and job content and economics combined.

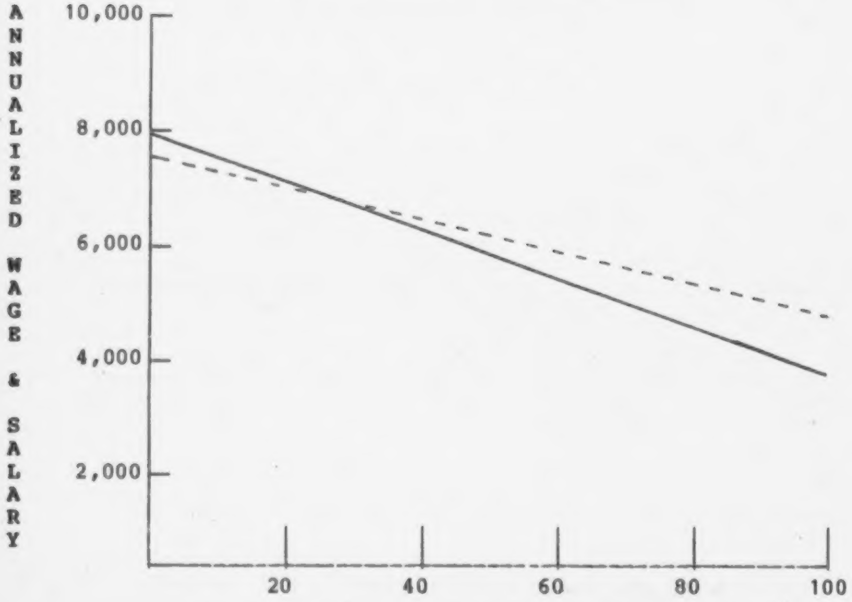
One study which incorporated both job content and economic approaches in a simultaneous research design was conducted in 1980 by Treiman, Hartmann, and Roos.[5] Using 1970 census data, they empirically analyzed 499 occupations using individual and job content variables to attempt to predict the median earnings of job incumbents. The individual variables used were mean school years completed and mean years of post-schooling labor force experience. Four job content variables were measured using data from the Department of Labor's Dictionary of Occupational Titles--substantive complexity, motor skills, physical demands, and unfavorable working conditions. A final variable, percent female, also was included.

The following chart illustrates the results of this research. The solid line is a regression of mean earnings on percent female. The broken line is a regression of mean earnings on percent female controlling for the six individual and job characteristics.

---

[5] Donald J. Treiman, Heidi I. Hartmann, and Patricia Roos, "Assessing Pay Discrimination Using National Data," in Comparable Worth and Wage Discrimination: Technical Possibilities and Political Realities, edited by Helen Remick, Philadelphia, Temple University Press, 1984, pp. 137-154.

REGRESSION DEMONSTRATING THE EFFECT OF
SEX SEGREGATION ON WAGES



PERCENT FEMALE IN OCCUPATION

The chart indicates that the sex composition of an occupation had a strong effect on the earnings of incumbents, and that this effect was independent of job content and individual characteristics. In any case, a decision as to which, if any, combination method to use, still leaves open the questions of who should conduct such a study, how much it will cost, and how long it will take to complete.

DECIDING WHO SHOULD CARRY OUT THE STUDY

A decision to conduct a pay equity study at the federal level involves concerns of national importance on which no clear consensus has yet formed. Accordingly, those selected to carry out the study must be as objective as possible and represent all sides of the issue. Because the study may involve the use of complex job content and/or economic analyses, those involved in the study must also possess or have available a high level of technical competence in these areas. Finally, because a federal pay equity study may be a lengthy and difficult undertaking, those selected to carry out the study will need sufficient resources to complete the task in a reasonable amount of time.

The experiences of the states in conducting pay equity studies and the experiences of other federal studies suggest that two groups of participants should be involved in carrying out the study--a steering committee and a group of technical experts.

The concept of a steering committee has particular appeal from the standpoint of objectivity, for it could be composed of a broad spectrum of individuals with differing views on the pay equity issue. Members of the committee could include experts from the fields of equal employment opportunity, compensation, classification, and economics; and representatives from Congress, women's groups, employee organizations, and the private sector. Also, Congress may wish to include one or more representatives from OPM on the steering committee, as it is the federal agency which would be responsible for implementing any policy changes that may arise from a pay equity study.

The steering committee could report to Congress and could be entrusted with decisionmaking authority, subject to congressional oversight, to facilitate resolution of a number of policy issues. Those issues may include:

--deciding on a precise goal or goals for the study;

--determining what pay systems will be included in the study;

--deciding how jobs and/or job incumbents will be selected for study (e.g., simple random or stratified samples);

--deciding what general type of job evaluation will be used (policy-capturing or a priori) and, within each category, what particular system seems most appropriate; and

--determining what analytic technique will be used to interpret the study results.

To resolve these issues and to carry out the study, the steering committee will need to call upon experts in a variety of disciplines. Some experts may be found within the government. For example, expertise in sampling and survey design could be obtained from the Census Bureau; expertise in economics and labor markets could be drawn from the Department of Labor. Assistance could also be obtained from outside the government. In this regard, various economists and job evaluation experts have indicated to us that they would be interested in conducting analyses of wage differentials in the federal sector.

With respect to our potential role in carrying out part or all of the study, several concerns arise. First, depending on the extent of our involvement, we might find it necessary to augment our staff through direct hire or contract with experts from the fields of compensation and/or economics. Second, there is a question as to whether we could best serve the Congress as a study participant or as an independent reviewer of study design, progress, and results.

COST AND TIME CONSIDERATIONS

Given the variety of options available and the related policy decisions that need to be made, it is infeasible to provide accurate estimates of the cost of and time frame for a federal study. However, some information on costs and time frames is available based on the experiences of the states.

As noted in chapter 1 and appendix II, the states have conducted a variety of job content studies. Complete and consistent data for the various state studies are not available, however. Moreover, state studies have been of different scope. For example, Connecticut originally conducted a pilot job content pay equity study of 120 of their 2,600 job titles at a cost of $30,000, which was completed in 3 months. The state is now in the process of conducting and implementing a complete study of the state's classification system. This study began in 1981 and is expected to be completed in 1986. Implementation costs as of August 1984 were $600,000, which includes internal operating costs and consultant fees, but not the costs incurred by other state agencies. Other states have spent varying amounts depending on the type and scope of the study. Some examples include $650,000 in North Carolina; $500,000 in New York; $301,000 in Maryland; and $85,000 in Minnesota. (See map of state pay equity studies on page 3 and description of study types in app. II).

The time expended by the states in conducting job content studies has generally been less than 18 months, although implementation of study results has taken considerably longer. The panel of state experts that we hosted as a part of this study generally agreed that pay equity studies should be conducted quickly, preferably in less than 18 months. They pointed out that a more time-consuming approach could result in documentation for jobs analyzed early in the process becoming out of date before the study is completed. This problem can, however, be minimized by employing a relatively large number of people to carry out the repetitive aspects of the study (e.g., conducting job analyses and evaluations).

Still, until a series of policy decisions are made, neither the expected costs nor the anticipated time frame for a federal study can be projected. However, if the Congress were to appoint a steering committee for the federal study, one of the committee's tasks could be to develop a proposed budget and a proposed study time frame for congressional review.

Congreſs of the United States
Washington, D.C. 20510

November 15, 1984

The Honorable Charles A. Bowsher
Comptroller General of the United States
U.S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Comptroller General:

During the 98th Congress, much interest was expressed in both the House of Representatives and the Senate regarding the issue of wage-based sex discrimination in the federal government. The House passed legislation mandating a study of the federal pay and classification systems to determine if they discriminate in wages on the basis of sex. In the Senate, similar legislation was introduced but not passed.

In the 99th Congress, both the House Post Office and Civil Service Committee and the Senate Subcommittee on Civil Service, Post Office, and General Services intend to continue the work begun in the 98th Congress regarding pay and classification disparities which may exist in the federal system, as indicated in discussions relating to this issue on both the House and Senate floors on October 10, 1984 (H11768-70 and S14003).

On December 10, 1982, the House Subcommittees on Civil Service, Human Resources, and Compensation and Employee Benefits requested the General Accounting Office to study and report on the principal systems for classifying federal and non-federal civilian personnel in order to provide background information for evaluating sex bias in federal classification systems. The first phase of your report, dated July 13, 1984, was helpful in describing how various federal classification systems operate. We anticipate that phase two of the report, which will analyze non-governmental job classification systems, will be equally informative.

In addition to your efforts to complete this report, we believe that a report presenting various options for selecting an appropriate scope and methodology for a thorough pay equity analysis of federal executive agencies' pay and classification practices (to determine whether job classifications held predominantly by female workers are underpaid in contrast to job classifications held predominantly by male workers although the job qualifications, working conditions, and requirements are comparable) would be very useful to the appropriate House and Senate Committees.

We, therefore, request that you prepare such a report and that the report include:

(1) An evaluation and analysis of the advantages and disadvantages of various methodologies that could be used in a study to accurately and effectively determine whether and, if so, the extent to which sex-based wage discrimination exists in the federal pay and classification systems (including but not limited to those methodologies used in all of the studies underway or completed in the various States, with a description of follow-up action which may have resulted from such studies in those States), with particular emphasis on which of these methodologies would be suited to be used to evaluate accurately and effectively the federal pay and classification systems. In particular, we ask that you address the methodology described in the enclosed excerpt from the House Committee report (98-832).

(2) An estimate and analysis of the time that would be involved in conducting such a study.

(3) Estimates of the cost of conducting such a study on a contract basis or directly by a branch of the federal government.

(4) An analysis of the advantages and disadvantages, in terms of conducting an objective and thorough study, of having the study done by a private contractor selected by the Office of Personnel Management, by a private contractor selected by the General Accounting Office, by the General Accounting Office alone, or by the Office of Personnel Management alone, or under some other suitable arrangement that you might also believe should be considered.

(5) A determination of the relationship of the current Office of Personnel Management review of the classification process to be completed by the end of the year to the objectives of the pay equity analysis that we are asking GAO to address in this request.

We also request that your Office consult with federal employee organizations, job evaluation experts, and the Office of Personnel Management throughout the preparation of the report.

In order that the information be reviewed in a timely fashion by appropriate Members of the House and Senate, the report should be completed not later than March 1, 1985.

We appreciate your attention to this matter and look forward to receiving your report.

With warm regards,

Cordially,

Mary Rose Oakar
Mary Rose Oakar
Chair
Subcommittee on Compensation
and Employee Benefits
Committee on Post Office
and Civil Service
U.S House of Representatives

William D. Ford
William D. Ford
Chairman
Committee on Post Office and
Civil Service
U.S. House of Representatives

Ted Stevens
Ted Stevens
Chairman
Subcommittee on Civil
Service, Post Office,
and General Services
Committee on Governmental
Affairs
U.S. Senate

Jeff Bingaman
Jeff Bingaman
Ranking Minority Member
Subcommittee on Civil
Service, Post
Office, and
General Services
Committee on
Governmental
Affairs
U.S. Senate

Dave Durenberger
Dave Durenberger

Alan Cranston
Alan Cranston

Daniel J Evans
Daniel Evans

Enclosure

Tom Eagleton
Thomas F. Eagleton
Ranking Minority Member
Committee on Governmental
Affairs
U.S. Senate

Excerpt (pgs.12-14) from House Report (98-832)
to accompany HR 5680

* * *

The committee realises that given the time and resources available, it would be difficult for the OPM to conduct a survey of all white- and blue-collar positions in the Federal Government and recommends that a representative sample of the work force throughout the Federal Government be taken, evaluating all job titles and occupations which are sex-segregated; i.e. 70 percent of the incumbents are members of the same sex and have more than 25 persons occupying these positions.

All classification and pay setting systems within the Federal Government such as exempt, nonexempt, supervisory, nonsupervisory, professional, administrative, technical, and clerical shall be included in the sample of job titles and occupations. It is important to note the committee's intention regarding the scope of the study. The same system and job evaluation techniques shall be applied to all positions in the sample. * * *

The statistical sample of benchmark jobs is a vital part of the study since the job descriptions serve as the key source of information on which job evaluations are based. The data for the job descriptions should be collected through a job content questionnaire which is self-administered and quantitative. The committee believes that federally employed industrial and econometrical psychologists and sociologists familiar with existing social science measurement techniques such as the Position Analysis Questionnaire, the Job Activity Preference Questionnaire, and the Job Diagnostic Survey should take part in developing the questionnaire.

* * *

The job content questionnaire should be supplemented by information collected through interviews with job incumbents and supervisors, and through observations by job analysts. Job descriptions for the job titles and occupations in the sample are to be developed by amalgamating responses to the job content questionnaire and appropriate supplemental information.

After the job descriptions have been developed, the jobs are then to be evaluated according to two standards. First, the committee wants OPM to analyse the job descriptions using the current classification process. In this way, the study will establish a basis of comparison between evaluation plans.

The second standard by which the committee intends OPM to measure the sample jobs would be based on an a priority system. To avoid several problems endemic to many job evaluation plans, the OPM should first establish the job content value of the benchmark sample independent and apart from compensation considerations. Once job content is derived, wages are then associated with the quantitative measures for the purpose of comparability analyses. Such an objective approach should employ numerical values assigned to a variety of work factors. The committee suggests that the factors should include, but not necessarily be limited to, such variables as knowledge and skill (reading, writing, listening, conveying information to others, job knowledge), mental demands (judgment in decision making, analysing and problem solving, responsibility and supervision over others), accountability (freedom to take action, impact of job on others and on the operation as a whole, and ability to carry out on a task), and working conditions (physical effort, environment and hazards).

The committee stresses the importance of keeping the factor weights free from bias. The committee recommends that OPM make explicit the criteria for assigning numerical value to the job factors. Factor scores should be described accurately and concretely.

Following the assignment of numerical values to job factors, the OPM should rate the sample jobs in relationship to the valued factors to determine the jobs' hierarchical order. The results of the hierachical ranking of positions as compared to the analysis of wage determination using the present evaluation techniques will indicate whether the Federal Government's pay and classification systems are biased in favor of traditionally male-dominated occupations.

* * *

PATRICIA SCHROEDER
1ST DISTRICT, DENVER, COLORADO

DISTRICT OFFICE:
1767 HIGH STREET
DENVER, COLORADO 80218
(303) 837-2354

WASHINGTON OFFICE:
2410 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-4431

Congreſs of the United States
Houſe of Repreſentatives
Washington, D.C. 20515

ARMED SERVICES COMMITTEE
POST OFFICE AND CIVIL
SERVICE COMMITTEE

November 20, 1984

Honorable Charles A. Bowsher
Comptroller General
General Accounting Office
Washington, DC 20548

Dear Mr. Comptroller General:

On November 15, 1984, several members of the House and Senate requested that you prepare a report on the appropriate scope and methodology for a pay equity analysis of federal classification and compensation practices. As you know, we along with Chairwoman Oakar requested work on this subject from GAO -- work which is on-going. Therefore, we would like to be listed as co-requesters of this study as well.

Please keep us informed of developments in the preparation of this report.

With kind regards,

Sincerely,

Pat Schroeder

PATRICIA SCHROEDER
Chairwoman
Subcommittee on Civil Service

GERALDINE FERRARO
Member of Congress

THIS STATIONERY PRINTED ON PAPER MADE WITH RECYCLED FIBERS

BARNEY FRANK, MASS., CHAIRMAN
MEL LEVINE, CALIF
MAJOR R. OWENS, N.Y
JOHN M. SPRATT, JR., S.C
JOE KOLTER, PA.
BEN ERDREICH, ALA.

JOHN R. McKERNAN, JR., MAINE
DAN BURTON, IND
DAN SCHAEFER, COLO

225-6751

NINETY-EIGHTH CONGRESS
Congress of the United States
House of Representatives
MANPOWER AND HOUSING SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-A
WASHINGTON, D.C. 20515

November 29, 1984

Mr. Charles Bowsher
Comptroller General
U.S. General Accounting Office
440 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

In view of the Manpower and Housing Subcommittee's oversight responsibilities for the Office of Personnel Management, I have a deep interest in the progress and outcome of the current GAO study of comparable worth or pay equity issues in the Federal workforce. Therefore, I will appreciate your sending copies of interim materials or progress reports to the Subcommittee office. Please include Joy Simonson of the Subcommittee staff in any briefings on your study which may be held for Congressional staff. She may be reached at 225-6751.

Thank you for your cooperation.

Barney Frank

BARNEY FRANK
Chairman

PAY EQUITY STUDIES AND RELATED ACTIVITIES IN THE STATES

Introduction

This appendix and the corresponding map (see page 3) summarize states' actions and initiatives with regard to pay equity. The data have been compiled from a variety of sources and categorize state initiatives in five main areas.[1] For each area the range of activities is described and examples of selected initiatives are given.

(1) No Formal Study Initiated

This category includes those states which have not undertaken a formal study or analysis of occupational segregation, sex-based wage disparities, or pay equity within their pay and classification systems. It should be noted, however, that despite the lack of formal study many of these states have conducted information-gathering activities (e.g. hearings, study commissions, research projects) designed to collect data which defines the issues, identifies pay equity initiatives, and/or assesses the ramifications of adopting quantitative job evaluation systems and establishing pay policies based on job content. These information-gathering activities have been initiated and conducted by commissions on the status of women, personnel departments, human relations commissions, and state legislatures. Their primary purpose has been to identify and educate involved parties on the social, economic, and legal issues of pay equity.

---

[1] The sources listed below sometimes disagree on actions by particular states and many classify the same action differently. In addition, many actions are currently underway. Consequently, this appendix and the accompanying map should serve only as one indicator of national trends.

Sources: "Who's Working for Working Women?", Comparable Worth Project, National Committee on Pay Equity and National Woman's Political Caucus, 1984; "Pay Equity and Comparable Worth", Bureau of National Affairs Special Report, 1984; "Comparable Worth: The Problem and the State's Approaches to Wage Equity", Industrial Relations Center, University of Hawaii, 1983; "Comparable Worth in State Governments", Council of State Governments, 1984; data compiled by Alice H. Cook (unpublished); "Status and Implications of Comparable Worth", Commonwealth of Virginia, 1985; telephone survey of selected states.

Mississippi, Nevada, South Carolina, and Virginia are examples of states included in this category. Mississippi is currently surveying the salient issues. South Carolina's Department of Personnel is developing a position paper which will review other states' activities in the pay equity area. A January 1985 report to the Nevada legislature surveyed the issues, methodologies, employee demographics, and the potential costs and effects of pay equity on their classification system. The Commonwealth of Virginia recently issued a report which identifies changes and costs which might be included in its job evaluation and classification system should it adopt the concept of pay equity at some future time.

(2) Preliminary Study Ongoing/Completed

This category includes those states which have documented the extent of occupational segregation and sex-based wage disparities in their state civil service systems. These studies have often been initiated at the request of employee unions and are commonly conducted to determine whether, and if so, the extent to which a wage gap exists. Like the more general information-gathering efforts in the first category, these studies have been conducted by commissions on the status of women, labor departments, personnel departments, human relations commissions, and state legislatures.

Indiana and Kentucky are among the states which have undertaken such studies. In Indiana, a task force appointed by the Governor recently completed a study of the state's compensation program. Occupational segregation and sex-based wage disparities were one of nine issues addressed in their report. In Kentucky, the Legislative Research Commission issued a report in 1983 which specifically investigated sex-based wage differentials, occupational segregation, and whether male and female employees receive equal pay for equal work in the state civil service system.

(3) Pay Equity Study Ongoing/Completed

This category includes those states which have undertaken job evaluation studies which compare the relative earnings for comparably valued male- and female-dominated jobs. Pay equity studies conducted in the states have been initiated through collective bargaining, legislation, executive order, budget appropriation, and civil service department action. These studies, ranging from small pilot studies to more comprehensive studies, generally follow the steps outlined in chapter 3 (see page 39). They are typically directed by joint committees consisting of representatives of affected parties (e.g. employees, advocacy groups, unions, management, etc.) which perform in an advisory capacity to consultants who provide technical expertise in carrying out the study. Examples of states which have completed or are currently undergoing pay equity studies are provided in the body of the report (see pages 33 and 35).

(4) Pay Equity Study Results Being Implemented

This category includes those states currently in the process of implementing the results of pay equity studies. Pay equity programs have been implemented in various states primarily to remedy sex-based wage differentials thought to be perpetuated by pay-setting practices which rely on the external labor market for establishing pay rates. Implementation has occurred through the collective bargaining process, negotiation, or enabling legislation. The experiences of the states of Washington, Connecticut, and Minnesota, as well as the cities of Colorado Springs, Colorado, and San Jose, California, in implementing pay equity study results are reviewed in the body of the report (see pages 36 to 39).

New Mexico is depicted as falling within this category on the map which appears on page 3. However, their situation is unique, in that, implementation of equity pay was initiated prior to the conduct of a study. In 1983 New Mexico appropriated $3.2 million for pay equity adjustments and elevated the salary ranges of 23 low-paid, female dominated jobs based on data from a 1980 review of their pay and classification system. New Mexico is currently developing a point factor system with the goal of decreasing pay disparities between equally valued jobs.

(5) Classification System Reform Meeting Pay Equity Criteria

This category includes those states which have initiated or completed revisions to their pay and classification system which, in effect, achieve pay equity criteria. Classification system reform is often initiated by the state personnel agency in an attempt to update its old classification system. These studies have been carried out by the state personnel department, frequently under the direction of private consultants. Revisions have entailed adopting a quantitative job evaluation system and implementing wage adjustments based on measured job content.

Idaho provides an example of a state which falls within this category. In Idaho, the Hay point-factor evaluation system was chosen to help establish an internally equitable and externally competitive salary plan. The principal objective of the study was to improve the operation of the pay and classification system, not to achieve pay equity. However, the system uses one set of evaluation criteria and one pay plan to encompass all jobs held by classified employees. Jobs equally evaluated are equally paid. Louisiana is another state which has reformed its classification system without a pay equity study. A Pay Advisory Council appointed by the Civil Service Director and a private consulting firm developed a point-factor system of job evaluation and a new pay structure to address problems of internal equity. Again, the system calls for universal criteria and one pay plan for all classified jobs. Implementation of Louisiana's new classification and compensation system, which emphasizes quantitative measurement of job content and relies on measured job worth as the pay-setting mechanism, will also address the pay equity issue, although this was not stated as a motive for undertaking the study.

LEGAL BACKGROUND

I. Relevant Legislation and Executive Orders

  A. Equal Pay Act of 1963

  B. Civil Rights Act of 1964

  C. Civil Service Reform Act of 1978

  D. Executive Order 11478, as amended

II. Relevant Cases

  A. Pay-Inequality Cases Involving the Federal Government

  B. Significant "Title VII" Cases

    (1) Cases Preceding County of Washington v. Gunther

    (2) County of Washington v. Gunther

    (3) Post-Gunther cases

    (4) Recent Cases: AFSCME v. State of Washington and Spaulding v. University of Washington

    (5) Pending Litigation

III. Specific Considerations Affecting Pay-Equity Studies

  A. Legal Implications of Conducting a Pay-Equity Study

  B. Judicial Consideration of Pay-Equity Studies

    (1) Job Evaluation

    (2) Statistical Studies

I. Relevant Legislation and Executive Orders

A. Equal Pay Act of 1963.

The Equal Pay Act, 29 U.S.C. § 206(d), is contained in the Fair Labor Standards Act and provides as follows:

> "No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, that an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee."

Essentially, the Equal Pay Act prohibits unequal pay for equal or "substantially equal" work performed by men and women, unless an employer justifies the pay differential under one of the act's four affirmative defenses. The concept of "substantial equality" was developed by the courts. See *Shultz* v. *Wheaton Glass Co.*, 421 F.2d 259 (3rd Cir. 1970), *cert. denied*, 398 U.S. 905 (1970); and *Brennan* v. *Prince William Hospital Corp.*, 503 F.2d 282 (4th Cir. 1974), *cert. denied*, 420 U.S. 972 (1975).

B. Civil Rights Act of 1964 and the Bennett Amendment

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000a-h, was enacted 1 year after the Equal Pay Act. The relevant part of Title VII prohibits discrimination in employment on the basis of race, color, national origin, religion, and sex. 42 U.S.C. § 2000e-2(a).

The so-called "Bennett Amendment" to Title VII, 42 U.S.C. § 2000e-2(h), provides that it shall not be an unlawful employment practice for an employer to compensate employees differently on the basis of sex if such differentiation is "authorized" by the Equal Pay Act. As is discussed more fully below, the Bennett Amendment's use of the term "authorized" generated controversy in the federal courts. Some courts narrowly interpreted the term to mean that the only sex-based wage discrimination claims cognizable under Title VII were those that could also be brought under the Equal Pay Act, thus limiting Title VII claimants to an "equal work" standard. Other courts adopted a broader interpretation, holding that the Bennett Amendment merely incorporates into Title VII the Equal Pay Act's four affirmative defenses. The Supreme Court resolved this issue by adopting the latter interpretation in County of Washington v. Gunther, 452 U.S. 161 (1981).

C. Civil Service Reform Act of 1978

The Civil Service Reform Act of 1978, Public Law 95-454, established a number of "merit system principles" for federal personnel management. The relevant principles, codified in 5 U.S.C. §§ 2301(b)(2) and (3), provide that:

> "(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
>
> "(3) Equal pay should be provided for work of equal value * * *."

D. Executive Order No. 11478, as amended

Executive Order No. 11478, 34 Fed. Reg. 12,985 (1969), assures equal employment opportunity in the federal government. The relevant part of the order provides that:

> "It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of * * * sex * * * and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government."

Executive Order No. 11478 was amended by Executive Order No. 11590, 36 Fed. Reg. 7,833 (1971), to extend the mandate for equal employment opportunity to the Postal Service and the Postal Rate Commission.

II. Relevant Cases

A. Pay-Inequality Cases Involving the Federal Government

In 1972, Title VII was amended to permit federal employees to file discrimination suits against the government. 42 U.S.C. § 2000e-16(a). In 1974, the definition of "employer" in the Fair Labor Standards Act, containing the Equal Pay Act, was expanded to include public agencies. 29 U.S.C. § 203(d). Because of these legislative developments, federal employees alleging sex-based wage discrimination may commence legal actions under both Title VII and the Equal Pay Act.

Although the government has not been the subject of any "landmark" pay-equity litigation under Title VII, the cases discussed below indicate that female employees have invoked the Equal Pay Act to challenge agencies' pay and classification practices. In Cayce, Epstein, Grayboff, and Grumbine, cited below, female employees classified under the General Schedule alleged that they were under-graded in comparison with men who performed the same work. The district court in Cayce held that a grade disparity may be justified by the government's facially neutral classification system, but only if the system is applied in a sex-blind manner. Epstein stands for the proposition that an Equal Pay Act analysis is not limited to a comparison of position descriptions, but must focus on actual job content. In Grumbine, the district court held that a federal agency may not assign a woman to a grade lower than a man performing equivalent duties simply because she works in a different part of the country. Grayboff held that the government may not justify a grade disparity by asserting that the female employee was willing to accept a lower salary.

Thompson, cited below, involved an Equal Pay Act challenge to the Government Printing Office's administratively-controlled pay system. Citing pervasive sex discrimination in the printing industry, female bindery workers successfully challenged the agency's practice of paying them less than male bookbinders for substantially equal work.

Synopses of the relevant cases follow.

Cayce v. Adams, 439 F. Supp. 606 (D.D.C. 1977).

The plaintiff in Cayce , a grade GS-8 statistical assistant employed by the Federal Aviation Administration (FAA), alleged that she was performing work substantially equal to a man in grade GS-11. She contended that the FAA's failure to promote her to grade GS-11 constituted a violation of the Equal Pay Act.

The district court found that the plaintiff and her male counterpart were performing substantially equal work within the contemplation of the Equal Pay Act. Then, turning to the Equal Pay Act's four affirmative defenses, the court found that the fourth exemption for a "factor other than sex" would include a "bona fide classification system." Applying this exemption, the court concluded that the government's classification system for General Schedule employees is facially bona fide because it is intended to "operate fairly and and evenly, treating all employees alike." 439 F. Supp. at 608.

Despite the facial neutrality of the government's classification system, the court went on to state that the system would be exempt from the Equal Pay Act only if it is applied by supervisors and classifiers in a sex-blind manner. Analyzing the facts in Cayce, the court found that the FAA failed to apply the classification system in a bona fide manner because it knew that the male employee was overgraded and nevertheless failed to downgrade him.

Epstein v. Secretary, United States Department of the Treasury, 34 Empl. Prac. Dec. (CCH) § 34,541 (7th Cir. July 17, 1984).

In Epstein, the Seventh Circuit held that the Bureau of Alcohol, Tobacco and Firearms (BATF) did not violate the Equal Pay Act when it decided to upgrade a male employee while refusing to reclassify a female employee who allegedly performed similar work. While the court acknowledged that the male and female employees' job descriptions were almost identical, it stated that the Equal Pay Act requires an evaluation of duties actually performed by employees. After analyzing the employees' duties, the court found that the jobs were not substantially similar because the male employee had been delegated more independent decisionmaking authority than the female.

Grumbine v. United States, 586 F. Supp. 1144 (D.D.C. 1984).

Grumbine involved an Equal Pay Act claim filed by a grade GS-14 regional counsel of the U.S. Customs Service. The plaintiff alleged that her duties and responsibilities were substantially the same as those performed by her immediate predecessor and eight other regional counsels, all male, who were classified in grade GS-15.

The government defended the suit on the ground that each of Customs' regional offices represented a separate "establishment" within the meaning of the Equal Pay Act. On this basis, the government maintained that it was not required to pay the plaintiff at the same rate as the other regional counsels.

The district court rejected the government's argument, holding that a governmental "establishment" for purposes of the Equal Pay Act is the nationwide civil service system, unless good cause is shown for a geographical exception. On this basis, the court stated that a comparison between the pay of male and female employees must be based on the civil service as a whole, and that a woman may not be paid less than a man with equivalent responsibilities simply because she works in a different location. Accordingly, the court concluded that the plaintiff could maintain a claim under the Equal Pay Act even though she was the only regional counsel at her duty site.

Grayboff v. Pendleton, 36 FEP Cases 350 (N.D. Ga. 1984).

The plaintiff in Grayboff was an equal employment specialist, grade GS-11, employed by the U.S. Civil Rights Commission. She alleged, and the court agreed, that her duties were substantially the same as those performed by male equal employment specialists who had been assigned to grade GS-13.

The government argued that the grade differential was justified because the plaintiff was willing to work at the grade GS-11 level, and her salary history was low compared to the men in grade GS-13. The court rejected the government's defense, stating that women have been willing to accept depressed pay rates, and have lower salary histories, "precisely because of sex discrimination." 36 FEP Cases at 356.

Thompson v. Sawyer, 678 F.2d 257 (D.C. Cir. 1982).

In Thompson, female bindery workers argued that the Government Printing Office (GPO) violated the Equal Pay Act by paying them less than male bookbinders who allegedly performed equal work. The court of appeals upheld the district court's determination that GPO had violated the Equal Pay Act, finding that some of the female bindery workers and male bookbinders performed substantially equal work even though they used different machines. The court then held that GPO could not justify the pay differential by referring to traditional industry practice as a "factor other than sex," because the bookbinding industry has had a pervasive history of sex-segregating jobs according to stereotypical "men's work" and "women's work." 678 F.2d at 265, 276, and 277.

B. Significant "Title VII" Cases

(1) Cases Preceding County of Washington v. Gunther

Before the Supreme Court's decision in County of Washington v. Gunther, 452 U.S. 161 (1981), courts expressed different opinions concerning the Bennett Amendment's provision that a sex-based wage differential would not violate Title VII if it is "authorized" by the Equal Pay Act. The district court in Lemons v. City & County of Denver, cited below, narrowly held that a claim of sex-based wage discrimination could not be brought under Title VII unless it satisfied the Equal Pay Act's "equal work" standard. A broader interpretation, adopted in IUE v. Westinghouse Electric Corp., cited below, is that the Bennett Amendment merely incorporated into Title VII the Equal Pay Act's four affirmative defenses.

The cases discussed below illustrate the split of judicial opinion concerning the effect of the Bennett Amendment and also provide some early commentary on the concept of comparable worth and the viability of the "marketplace" defense in Title VII litigation.

Christensen v. State of Iowa, 563 F.2d 353 (8th Cir. 1977).

In Christensen, clerical workers challenged the University of Northern Iowa's practice of paying the exclusively female class of clerical workers less than the comparably-valued and predominantly-male class of physical plant workers. Based on a job evaluation conducted under the "Hayes System," the university had determined that the clerical and physical plant jobs were of equivalent value and it assigned these positions to the same labor grades. However, based on a survey of local market rates, the university established advanced pay steps for the physical plant employees and not for the clerical workers. The clerical workers maintained that the university had violated Title VII because its wage scales perpetuated sex discrimination inherent in the marketplace.

The court found that it was not required to address the effect of the Bennett Amendment because the plaintiffs had failed to state a cause of action under Title VII. Specifically, the court stated that nothing in Title VII requires an employer to, "ignore the market in setting wage rates for genuinely different work classifications." 563 F.2d at 356.

Lemons v. City & County of Denver, 17 FEP Cases 906 (D. Colo. 1978), affirmed, 620 F.2d 228 (10th Cir. 1980), cert. denied, 449 U.S. 888 (1980).

In Lemons, city-employed nurses challenged the city's pay and classification system which aligned nurses' wages with those paid to non-city nurses in the community. The nurses claimed that this pay practice incorporated historical discrimination against the female-dominated nursing profession, and that the city should have set the nurses' pay with reference to comparable jobs in its own classification system.

The district court ruled that the city's pay system did not violate Title VII. While the court presumed that the Bennett Amendment limited Title VII to claims of substantially equal work, it specifically held that Title VII does not prohibit an employer from setting wages based on market factors. Thus, although the court recognized that depressed wages in the nursing profession may reflect historical discrimination, it stated that Title VII was not intended to "roll aside all history" or to require an employer to pay wages based on an assessment of job worth. 17 FEP Cases at 908, 909.

Fitzgerald v. Sirloin Stockade, Inc., 624 F.2d 945 (10th Cir. 1980).

In Fitzgerald, the Tenth Circuit affirmed a district court decision finding Title VII liability where an employer failed to increase the salary of a female employee when she took over most of the duties of a male advertising director but did not qualify for the title of advertising director. The court rejected the employer's argument that claims under Title VII are restricted by the Equal Pay Act's "equal work" standard, stating that Title VII affords a broader remedy for sex-based wage discrimination.

IUE v. Westinghouse Electric Corp., 631 F.2d 1094 (3d Cir. 1980).

The plaintiffs in Westinghouse alleged that, in the late 1930s, the company had "point-rated" jobs according to the responsibilities involved and the training and knowledge required. Then, the company set wage rates for female-dominated jobs lower than rates for male-dominated jobs with the same point rating. Although Westinghouse altered its classification system in 1965 to eliminate sexual job designations, the plaintiffs claimed that the company maintained the discriminatory wage structure established under its prior plan.

The Third Circuit held that the facts alleged by the plaintiffs, if proven, would constitute intentional sex discrimination in violation of Title VII. As the basis for this holding, the court found that the Bennett Amendment does not limit Title VII claims to those alleging equal work.

Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300 (E.D. Mich. 1980).

In Gerlach, female engineering layout clerks classified as clerical workers alleged that they were being paid less than the predominantly male class of field assistants even though their work was of comparable value to the company. The court ruled that the plaintiffs could maintain a claim under Title VII without meeting the Equal Pay Act's "equal work" standard. However, the court refused to permit as a theory of liability the plaintiff's claim that their work was undervalued in comparison with the men's work, because they did not allege that the undervaluation resulted from intentional sex discrimination. The court stated that a claim grounded solely on comparable worth is not cognizable under Title VII because, "such an allegation is by necessity based on subjective evaluations of comparability among jobs." 501 F. Supp. at 1321.

(2) County of Washington v. Gunther, 452 U.S. 161 (1981).

Gunther involved a Title VII action filed by four female prison guards who claimed that the county paid them lower wages than male prison guards, and that part of the pay differential was attributable to intentional sex discrimination. Specifically, the plaintiffs alleged that the county had conducted a job evaluation showing that the female guards' services were worth approximately 95 percent of the male guards' services, but that it paid female guards only 70 percent of what the male guards earned. The district court dismissed the complaint, finding no violation of the Equal Pay Act because the women and men performed different duties: the female guards supervised one-tenth as many prisoners as the male guards, and they performed some clerical work. Further, the district court determined that satisfaction of the Equal Pay Act's requirements was a prerequisite to recovery under Title VII for sex-based wage discrimination. The Ninth Circuit reversed, holding that the Bennett Amendment did not limit Title VII's prohibition against sex-based wage discrimination to claims of unequal pay for equal work.

The Supreme Court affirmed the Ninth Circuit's ruling, but emphasized at the outset that the Gunther facts did not require it to address the "controversial concept of 'comparable worth'." 452 U.S. at 166. Also, the Court noted that the suit did not require a court to "make its own subjective assessment of the value of the male and female guard jobs, or to attempt by statistical technique or other method to quantify the effect of sex discrimination on the wage rates." 452 U.S. at 181. Rather, the Court stated, the female guards were seeking to prove "by direct evidence" that their wages were depressed because of intentional sex discrimination. 452 U.S. at 166. The Court held that this claim was cognizable under Title VII even though it did not involve unequal pay for equal work, finding that the purpose of the Bennett Amendment was merely to incorporate the Equal Pay Act's four affirmative defenses into Title VII. However, the Court declined to define the scope of Title VII for purposes of future litigation involving sex-based wage discrimination. 452 U.S. at 181.

(3) Post-Gunther Cases

Courts deciding wage-inequality cases in the wake of Gunther expressed different opinions concerning the reach of Title VII. While it is difficult to identify a common theme among the cases discussed below, it appears that courts have expressed a preference for findings of intentional discrimination and have rejected claims based solely on the theory of comparable worth. For example, in Power v. Barry County and Plemer v. Parsons-Gilbane, cited below, the courts declined to find discrimination based on a plaintiff's empirical comparison of dissimilar jobs, stating that such claims would require a court to independently assess the worth of the jobs in question. On the other hand, some commentators have suggested that Taylor v. Charley Brothers and Briggs v. City of Madison, cited below, implicitly endorse the concept of comparable worth. BUREAU OF NATIONAL AFFAIRS, PAY EQUITY AND COMPARABLE WORTH 17 (1984). In both Taylor and Briggs, the courts found that observed similarities between female and male job classifications permitted an inference that the jobs were of comparable value to the employer.

Another significant feature of the cases discussed below is the courts' treatment of the "marketplace" defense in Title VII litigation. In Briggs v. City of Madison, the court held that an employer may rebut a presumption that a wage disparity resulted from intentional discrimination by showing that the male-dominated job commanded a higher pay rate in the local market. On the other hand, the district court in Kouba v. Allstate Insurance Co., cited below, stated that the market rate is not a "factor other than sex" which would justify a pay differential for equal work performed by men and women.

Synopses of relevant cases follow.

Boyd v. Madison County Mut. Ins. Co., 653 F.2d 1173 (7th Cir. 1981).

In Boyd, a male supervisor was excluded from an "attendance bonus" plan available only to an all-female class of clerical workers. Invoking Title VII, the supervisor argued that the company had discriminated against him on the basis of sex by offering the bonus only to female employees. The company argued that Title VII did not apply to the supervisor's claim because his work was different from that performed by clerical employees.

The Seventh Circuit applied County of Washington v. Gunther to hold that the supervisor had a cause of action under Title VII even though he did not perform work substantially equal to that of the female employees. However, the court decided to dismiss the suit because the company demonstrated a legitimate, nondiscriminatory reason for offering the attendance bonus only to its female clerical workers.

Taylor v. Charley Bros. Co., 25 FEP Cases 602 (W.D. Pa. 1981).

In Taylor, the District Court for the Western District of Pennsylvania found that a grocery wholesaler had violated Title VII by paying its female employees less than male employees simply because they worked in an all-female department, and not because their work was less valuable. Although some of the male and female jobs the court examined were not substantially equal, the court nevertheless found comparability in that they were all characteristic of laborer's work, requiring little skill, education, or experience. 25 FEP Cases at 611.

The district court inferred Charley Brothers' intent to discriminate from several different factors: the company had not, prior to trial, undertaken a job evaluation; the company exhibited a pattern and practice of segregating women within a single department; the company exhibited a pattern and practice of considering female job applicants only for that department; and company officials had made a number of discriminatory statements. 25 FEP Cases at 614.

Kouba v. Allstate Ins. Co., 523 F. Supp. 148 (E.D. Cal. 1981), reversed and remanded, 691 F.2d 873 (9th Cir. 1982).

Kouba involved a Title VII challenge to an insurance company's practice of paying new sales agents a "monthly minimum" salary based in part on their prior earnings. The female plaintiffs argued that, since women's wages were historically depressed, the company's practice of basing wages on prior earnings operated to "freeze" the status quo.

The district court found the company liable under Title VII because it paid women less than men for equal work, and because it failed to sustain its burden of proving that the wage differential was justified by a "factor other than sex," the Equal Pay Act's forth affirmative defense. The court rejected the employer's argument that prior earnings constituted a legitimate factor based on the market rate, stating that, "[a] resort to the so-called 'market rate' where the market rate is itself a reflection of historical discrimination will not be considered as a sufficient justification under the Equal Pay Act." 523 F. Supp. at 161. The court ruled that the company could not continue its pay-setting practice unless it could demonstrate that it had assessed the previous salaries and determined that they were based on factors other than sex, such as job responsibilities and hours of work. 523 F. Supp. at 162.

The appeals court reversed and remanded the case, ruling that the Equal Pay Act does not impose a strict prohibition against the use of prior salaries in setting wages. The court stated that an employer may defend its reliance on previous earnings by demonstrating an "acceptable business reason" for the wage-setting practice. 691 F.2d at 876.

After remand, the Kouba case was settled out of court. Reportedly, the insurance company agreed to change its pay-setting method and to set up a trust fund for the affected female employees.

Power v. Barry County, 539 F. Supp. 721 (W.D. Mich. 1982).

The six plaintiffs in Power served as matrons for county prisoners and also performed duties as dispatchers. They maintained that the county had violated Title VII by paying them less than an all-male staff of "correction officers" who supervised jail inmates and allegedly performed work of comparable value. The county moved to dismiss the suit, arguing that a "mere claim of unequal pay for comparable work does not state a valid claim under either Title VII or the Equal Pay Act." 539 F. Supp. at 722.

The district court dismissed the suit, finding that Title VII was not intended to recognize claims based on a theory of comparable worth or to require a court to independently assess the relative worth of two dissimilar jobs. As part of its determination, the court reviewed major cases decided under Title VII and characterized those cases as either adopting the "Gunther intentional discrimination theory" or employing a more traditional Title VII analysis, but not recognizing a theory of comparable worth. The court then examined the legislative history of Title VII, concluding that:

> "[T]he Supreme Court's recognition of intentional discrimination may well signal the outer limit of the legal theories cognizable under Title VII. There is no indication in Title VII's legislative history that the boundaries of the Act can be expanded to encompass the theory of comparable worth. Nor is there convincing evidence that Congress intended to make such a theory available to those seeking redress for real or imaginary wage inequalities. Nothing in the legislative history indicates support for an independent claim of recovery where the outcome of the case is dependent upon a court's evaluation of the relative worth of two distinct jobs." 539 F. Supp. at 726.

Connecticut State Employees Ass'n v. State of Connecticut, 31 FEP Cases 191 (D. Conn. 1983).

The plaintiff in this case alleged that the State of Connecticut violated Title VII by paying clerical workers less than employees in male-dominated jobs which it had determined to be of comparable value. The state moved to dismiss the plaintiff's complaint, maintaining that it was based exclusively on the concept of comparable worth.

Responding to the state's motion, the district court agreed that a "pure" comparable worth claim would not be actionable under Title VII. However, the court found that the plaintiff's complaint alleged intentional sex discrimination, based on the state's failure to pay salaries commensurate with evaluated job worth, and it allowed the suit to proceed on that basis.

Briggs v. City of Madison, 536 F. Supp. 435 (W.D. Wisc. 1982)

In Briggs, female public health nurses alleged that the city violated Title VII by paying them only 85 percent of what male public health sanitarians earned, even though the two jobs required equivalent qualifications, skill, effort, and responsibility. The nurses contended that much of the pay disparity could be traced to the historical devaluation of jobs performed primarily by women.

The district court ruled that the payment of different wages to sex-segregated job classifications will not, in itself, establish a presumption of intentional discrimination. In this regard, the court stated that the remedial purpose of Title VII "is not so broad as to make employers liable for employment practices of others or for existing market conditions." 536 F. Supp. at 445. However, the court found that the plaintiffs established a rebuttable presumption of intentional discrimination because they presented an additional element: the sex-segregated job classifications at issue were so similar in terms of skill, effort, and responsibility that "it can reasonably be inferred that they are of comparable value to an employer." 536 F. Supp. at 445.

The court then ruled that an employer may rebut a presumption of wage discrimination with respect to two similar, but not identical, jobs by showing that the male-dominated job commands a higher wage rate in the local market. On this basis, the court held that the city justified the 15 percent wage differential between public health nurses and sanitarians by showing that, without the differential, it could not recruit or retain sanitarians. 536 F. Supp. at 447.

Plemer v. Parsons-Gilbane, 713 F.2d 1127 (5th Cir. 1983).

In Plemer, a female EEO Representative claimed that her duties overlapped those of an EEO Officer, and that the $8,700 disparity between their salaries was attributable to sex and not justified by a dissimilarity between job responsibilities. The Fifth Circuit rejected the plaintiff's Title VII claim, characterizing the claim as one which would require a court to "make an essentially subjective assessment of the value of the differing duties and responsibilities of the [two] positions * * * and then determine whether [the woman] was paid less than the value of her position because she was female." 713 F.2d at 1134. The court distinguished County of Washington v. Gunther, stating that the Supreme Court's decision concerned direct evidence of intentional discrimination. In this regard, the court noted that the plaintiff would have presented a cognizable claim if she had shown that the company had evaluated the worth of the overlapping jobs, and then paid the man the full value of his evaluated worth while paying the plaintiff less than hers. 713 F.2d at 1134.

(4) Recent Cases

AFSCME v. State of Washington, 578 F. Supp. 846 (W.D. Wash. 1983).

Background: In 1974, Washington State commissioned Norman Willis and Associates to study its market-based compensation system. The objective of the study was to identify and examine pay differentials between predominantly-male and predominantly-female job classifications based on an evaluation of job worth.

The 1974 study evaluated 121 job classifications, including 59 predominantly-male classifications and 62 predominantly-female classifications. The term "predominantly" was defined as 70 percent dominance by one sex. The jobs were assessed according to four factors: (1) knowledge and skills, (2) mental demands, (3) accountability, and (4) working conditions. Then, each job was assigned a point value based on evaluated job content.

The results of the 1974 study suggested that, on the average, female-dominated jobs were paid 20 percent less than male-dominated jobs with the same point value. However, for various reasons over the years, the state legislature did not authorize implementation of a remedial pay plan. Consequently, AFSCME filed suit in Federal district court, charging that the state violated Title VII by failing to correct the wage disparities revealed by its own study. In 1983, after the suit was filed, the state legislature passed two "comparable worth" laws purporting to eliminate wage inequities over a 10-year implementation period.

Decision: In its AFSCME decision, the district court explained that the case was one of "first impression insofar as it concerns the implementation of a comparable worth compensation system." However, the court stated that the case could be characterized more accurately as a "straightforward 'failure to pay' case," closely analogous to County of Washington v. Gunther, because the state had failed to correct acknowledged pay disparities between predominantly-female and predominantly-male job classifications. 578 F. Supp. at 865.

The court found that the plaintiffs had established a Title VII claim under the "disparate impact" doctrine, which holds an employer liable for practices which are neutral in form but adversely affect a protected group. Specifically, the court determined that the state's compensation system had an adverse impact on women, and that the state failed to demonstrate a "legitimate and overriding business consideration" justifying the discrimination. 578 F. Supp. at 864.

The court then found that the state had intentionally discriminated against employees in predominantly-female job classifications. The court stated that discriminatory intent was established by the following factors:

> "(a) [T]he deliberate perpetuation of an approximate 20 % disparity in salaries between predominantly male and predominantly female job classifications with the same number of job evaluation points; (b) other statistical evidence including the inverse correlation between the percentage of women in a classification and the salary for the classification; (c) application of subjective standards which have a disparate impact on predominantly female jobs; (d) admissions by present and former State officials that wages paid to employees in predominantly female jobs are discriminatory; and, (e) the Defendant's failure to pay the Plaintiffs their evaluated worth as established by the Defendants." 578 F. Supp. at 864.

Once it found liability, the court ordered the state to: (1) cease its discriminatory compensation practices; (2) pay the plaintiffs amounts of compensation determined under the states "'comparable worth' plan as adopted in May 1983," and (3) conduct additional class evaluations. See AFSCME v. State of Washington, No. C82-465T (W.D. Wash. Dec. 14, 1983) (order granting injunction). In order to enforce this prospective injunctive relief, the court appointed a special master to oversee the state's compliance efforts. Additionally, the court ordered the state to pay backpay and fringe benefits to the affected employees. 578 F. Supp. at 871.

The state opposed the court's award of injunctive relief and backpay, arguing that the award would involve "tremendous costs" and that the state had already initiated a legislative remedy. The court, however, stated that Title VII does not contain a cost-justification defense. 578 F. Supp. at 867. Also, the court found that the state's 10-year implementation plan, if adopted as the injunctive remedy, would work a grave injustice to the plaintiffs because "Title VII remedies are now." 578 F. Supp. at 868 (emphasis in original). Finally, the court found that the state had acted in bad faith because it was "on notice of the legal implications of conducting comparable worth studies without implementing a salary structure commensurate with the evaluated worth of jobs." 578 F. Supp. at 870.

Pending Appeal: Washington State has appealed the district court's decision in AFSCME to the U.S. Court of Appeals for the

Ninth Circuit. Primarily, the state is contending that: (1) the district court improperly permitted AFSCME to prevail solely on the basis of the state's comparable worth study, without further proof that the wage differentials between male and female workers resulted from intentional sex discrimination; and (2) the district court's application of a disparate impact analysis was improper, in view of the Ninth Circuit's recent decision in Spaulding v. Univ. of Washington, discussed below. See 22 GOV'T EMPL. REL. REP. (BNA) 1866 (October 1, 1984).

Spaulding v. Univ. of Washington, 740 F.2d 686 (9th Cir. 1984), cert. denied, 53 U.S.L.W. 3403 (U.S. Nov. 26, 1984) (No. 84-515).

Decision: In Spaulding, members of the university's predominantly-female nursing faculty alleged that they were being underpaid in comparison with male faculty members in related departments, such as health services and social work. The district court, adopting the findings of a special master, rejected the plaintiffs' claims under the Equal Pay Act and Title VII. 35 FEP Cases 168 (W.D. Wash. 1981).

The Ninth Circuit affirmed the district court's ruling under the Equal Pay Act, determining that the jobs in question were not substantially equal. Then, the court found that the nursing faculty had not established Title VII liability under either the intentional discrimination or disparate impact doctrines. With respect to the plaintiffs' claim of intentional discrimination, the court stated that a demonstrated wage differential between jobs that are "only similar" will not, in itself, support an inference of discrimination. Further, the court rejected the plaintiff's suggestion that it apply a "comparability plus" test, under which the requirement for direct and circumstantial evidence of discriminatory conduct would vary in inverse proportion to the degree of comparability between the positions in question. 740 F.2d at 701.

The court examined the nursing faculty's evidence of intentional discrimination and concluded that the evidence was insufficient to state a cause of action under Title VII. Specifically, the court declined to infer discriminatory intent from the university's allegedly uncooperative response to the discrimination charges, the all-male composition of the university's budget committee, the nursing school's use of the lower-paid instructor rank to hire inexperienced faculty, or the "demeaning attitude" exhibited by a university administrator. 740 F.2d at 701, 702. Additionally, the court found that comparative statistics introduced by the nursing faculty were unreliable because: (1) the statistician used a simple matching technique rather than a regression model; (2) the selection of comparable faculty in other departments "unrealistically assumed the equality of all master's degrees, ignored job experience prior to University employment and ignored detailed analysis of day-to-day responsibilities" and; (3) the statistics did not compare female nursing wages to the wages of female faculty in other departments. 740 F.2d at 704. Since the court found that the plaintiffs had not established a prima facie case of intentional discrimination, it declined to decide whether the university's reliance on market forces would constitute a defense under Title VII. 740 F.2d at 699 n. 7.

The court then rejected the plaintiff's contention that the university's reliance on the market qualified as a facially neutral policy having an adverse impact on women. The court explained that "[e]very employer constrained by market forces must consider market values in setting his labor costs." 740 F.2d at 708.

Appeal: On November 26, 1984, the Supreme Court denied the nursing faculty's petition for certiorari, thereby declining to review the Ninth Circuit's decision in Spaulding. 53 U.S.L.W. 3403 (No. 84-515).

(5) Pending Litigation

As noted previously, Washington State's appeal from AFSCME v. State of Washington is pending before the Court of Appeals for the Ninth Circuit. Other pending lawsuits, filed within the past year, are described below.

AFSCME v. County of Nassau, No. 84-1730 (E.D.N.Y. filed April 23, 1984).

In April 1984, AFSCME and ten individual plaintiffs filed a pay-equity action against Nassau County, New York, in the U.S. District Court for the Eastern District of New York. Based on its own survey of county jobs, AFSCME is alleging that the county has systematically discriminated against women by paying traditional female jobs less than traditional male jobs which require an equivalent or lesser degree of skill, effort, and responsibility. Also, the union is charging that the county's maintenance of sex-segregated job classifications violates Title VII and the Equal Pay Act.

The individual claims allege discriminatory treatment of the following job classifications: registered nurse, assistant detective investigative aide, sanitarian trainee, domestic worker, social services caseworker, social welfare examiner, teletype operator, and food service worker. See 22 GOV'T EMPL. REL. REP. (BNA) 848 (April 30, 1984).

American Nurses Association v. State of Illinois, No. 84C-4451 (N.D. Ill. filed May 24, 1984).

In May 1984, the American Nurses Association and its local affiliate, the Illinois Nurses Association, filed a lawsuit in federal district court on behalf of nurses and other female employees of the State of Illinois. According to the plaintiffs, a state-commissioned study performed by Hay Associates showed that the state pays less for predominantly-female jobs than for predominantly-male jobs, even though the female jobs require equal or greater degrees of know-how, problem-solving, and accountability. The complaint charges that the state's failure to remedy the disclosed pay differentials constitutes a violation of Title VII. See 22 GOV'T EMPL. REL. REP. (BNA) 71, 72 (Jan. 9 1984); and 22 GOV'T EMPL. REL. REP. (BNA) 1082 (June 4, 1984).

AFSCME v. City of New York, No. 84-4529 (S.D.N.Y. filed June 27, 1984).

In June 1984, AFSCME filed a Title VII action against New York City, alleging that the city unlawfully pays the female and minority-dominated positions of Police Communications Technicians and Supervisory Police Communications Technicians less than the male-dominated positions of Fire Alarm Dispatchers and Supervisory Fire Alarm Dispatchers. According to AFSCME, the communications technicians' duties are substantially equal to those performed by fire alarm dispatchers.

Michigan State Employee's Association v. EEOC, No. 84-CV-4058 DT (E.D. Mich. filed August 31, 1984).

In August 1981, the Michigan State Employee's Association filed charges with the EEOC and the Michigan Department of Civil Rights, alleging that the Michigan Civil Service Commission intentionally undervalued and undercompensated jobs which traditionally have been performed by women. Neither agency investigated the charges and, in August 1984, the union filed a lawsuit against both the EEOC and the Michigan Department of Civil Rights. The complaint requests the district court to order the federal and state agencies to investigate the union's allegations of sex bias in the state's compensation system. See 22 GOV'T EMPL. REL. REP. (BNA) 1732 (Sept. 10, 1984).

AFSCME v. State of Hawaii, No. 84-1314 (D. Hawaii filed Nov. 9, 1984).

In November 1984, a local unit of AFSCME filed a class action on behalf of state, county, and judiciary employees in the State of Hawaii. The complaint alleges that the State of Hawaii and various public officials discriminatorily segregated job classifications according to sex, and paid employees in historically-female jobs less than employees in historically-male jobs for work of substantially equal value.

California State Employees Association v. State of California, No. 84-7275 (N.D. Cal. filed Nov. 21, 1984).

In November 1984, the California State Employees Association filed a sex-based wage discrimination lawsuit against the State of California, on behalf of 37,000 state employees. The union claims that California has violated Title VII by maintaining sex-segregated job classifications and discriminatory wage scales for female-dominated jobs, and that the state has acknowledged sex-based wage disparities in several reports to the state legislature. Besides seeking a court order to correct the alleged discriminatory practices, the union is requesting backpay and upward salary adjustments for the affected employees. See 22 GOV'T EMPL. REL. REP. (BNA) 2225 (Dec. 3, 1984).

III. Specific Considerations Affecting Pay-Equity Studies

A. Legal Implications of Conducting a Pay-Equity Study

Currently, there is no federal legislation or case law which affirmatively requires an employer to study its compensation practices from a pay-equity standpoint. An employer's decision whether to conduct a pay-equity study may be affected by the following legal considerations.

Several court cases suggest that an employer who conducts a pay-equity study may reduce the risk of Title VII liability for intentional sex discrimination. Thus, in Taylor v. Franklin Drapery Co., 441 F. Supp. 279 (W.D. Mo. 1977), an employer successfully defended a Title VII challenge to its wage structure by demonstrating that it had evaluated the worth of female and male-dominated jobs, and then structured wages according to differences in skill, effort, responsibility, and working conditions. In Taylor v. Charley Bros. Co., 25 FEP Cases 602 (W.D. Pa. 1981), discussed previously, the district court held a grocery wholesaler liable for intentional sex discrimination under Title VII partly because it had failed to evaluate the relative worth of sex-segregated jobs.

On the other hand, AFSCME v. State of Washington, 578 F. Supp. 846 (W.D. Wash. 1983), discussed previously, suggests that an employer who undertakes a pay-equity study must be prepared to remedy disclosed pay differentials immediately, or else face liability for intentional sex discrimination under Title VII. In AFSCME, Washington State commissioned a pay-equity study which revealed sex-based wage disparities, and then waited 9 years before passing legislation which purported to eliminate the disparities over a 10-year period. The district court held that Washington State's delay in implementing a pay-equity plan constituted evidence of intentional discrimination, and that the state's 10-year implementation scheme did not provide an adequate remedy under Title VII because "Title VII remedies are now." 578 F. Supp. at 864, 868 (emphasis in original). The court rejected Washington State's arguments that immediate correction of sex-based wage disparities would burden the state economically and disrupt its work force.

Additionally, AFSCME v. State of Washington suggests that an employer who commissions a pay-equity study for informational purposes may be legally bound by the results, even if the employer lacks confidence in the study's methodology. In its AFSCME decision, the district court did not address Washington State's arguments, presented at trial, that the state was already using a bona fide compensation system and that its pay-equity study was exploratory and unreliable. The court simply stated that it was not required to independently assess the value of the jobs in question because the state, by commissioning a pay-equity study, had arrived at its own determination of "comparable worth." 578 F. Supp. at 862.

B. Judicial Consideration of Pay-Equity Studies

(1) Job Evaluation

Generally, Federal courts have been unwilling to identify strengths or deficiencies in specific job-evaluation methodologies. The Supreme Court, and a number of lower Federal courts, have expressed a reticence to become involved in assessing the relative worth of male and female-dominated jobs, or to attempt by statistical technique or other method to quantify the effect of sex discrimination on wage rates. See County of Washington v. Gunther, 452 U.S. 161, 181 (1981); AFSCME v. State of Washington, 578 F. Supp. 846, 862 (W.D. Wash. 1983); and Vuyanich v. Republic Nat'l Bank, 505 F. Supp. 224, 284 (N.D. Tex. 1980), vacated and remanded on other grounds, 723 F.2d 1195 (5th Cir. 1984), rehearing denied, 35 FEP Cases 345 (5th Cir. 1984). For example, in Vuyanich, the district court addressed statistical evidence which both the plaintiffs and defendant had derived from a Hay Associates job evaluation, without commenting on the merits of the Hay system. The court merely stated that the defendant, by commissioning the Hay study, had arrived at its own determination of job worth. 505 F. Supp. at 284, 285.

In one case, however, a district court was willing to address the conflicting claims of job evaluation experts retained by the defendant, a grocery wholesaler, and the plaintiffs, employees of an all-female grocery store department. Taylor v. Charley Bros. Co., 25 FEP Cases 602 (W.D. Pa. 1981), discussed previously. The plaintiffs' expert had employed a job evaluation plan developed by the American Association of Industrial Management. The plan evaluated jobs according to 11 factors, grouped into the categories of "skill," "effort," "responsibility," and "working conditions." Each factor was divided into five degrees according to a descriptive definitional scheme. Then, depending upon the degree assigned for each of the 11 factors, each job was awarded a certain number of points. 25 FEP Cases at 612.

Although the district court in Taylor did not describe the defendant's job evaluation plan, it indicated that, for the following reasons, it preferred the plaintiffs' plan: (1) the plaintiffs' expert employed a job evaluation plan which had been more widely used and tested over a longer period of time than the defendant's; (2) the plaintiffs' plan contained more discrete categories of job analysis, which were more carefully defined, than the defendant's; and (3) the plaintiffs' expert had far more experience in the field of job evaluation than did the defendant's. 25 FEP Cases at 612.

(2) Statistical Studies

Even though judges are generally reluctant to become involved in job evaluation, several courts have commented on statistical models employed in wage-discrimination litigation. Some examples of these comments follow.

* Comparative statistics must take all relevant factors into account. Thus, in EEOC v. Hartford Fire Insurance Co., 31 FEP Cases 531, 545 (D. Conn. 1983), the district court discounted EEOC's statistical study which accounted for such factors as academic major, level of education, and tenure with the company, but ignored differences in job content. In Spaulding v. Univ. of Washington, cited above, 740 F.2d at 704, the Ninth Circuit discredited the nursing faculty's comparative statistics partly because they failed to account for prior job experience and did not include a detailed analysis of day-to-day responsibilities.

* Proxy variables must be accurate. In Vuyanich v. Republic Nat'l Bank, cited above, 505 F. Supp. at 314-317, the district court found that the plaintiffs' statistics did not establish a presumption of sex discrimination in wages because they used age as a proxy for prior work experience. The court observed that the use of age as a proxy tends to inflate the actual work experience of women.

* A statistical study must account for the fact that a number of variables operate simultaneously to influence salaries. Thus, in a suit filed by a female faculty members of the University of Houston, the Fifth Circuit rejected statistical evidence which examined the isolated effect of various factors--such as age, rank, and length of experience--on faculty salaries. Wilkins v. Univ. of Houston, 654 F.2d 388, 402 (5th Cir. 1981), rehearing denied, 662 F.2d 1156 (5th Cir. 1981), vacated on other grounds, 459 U.S. 809 (1982).

* A number of courts have recognized that multiple regression analysis is a useful tool for measuring the average salary differential between men and women, while controlling for productivity-related characteristics which may lead to differences in compensation. Spaulding v. Univ. of Washington, cited above, 740 F.2d at 704; Melani v. Board of Higher Education, 561 F. Supp. 769, 774 (S.D.N.Y. 1983). In Melani, the district court noted that the technique of regression analysis also provides a measure of the probability that observed salary differentials result from chance or random factors. 561 F. Supp. at 774.

BIBLIOGRAPHY

Barnett, The "Comparable Worth" Doctrine and the Implications of County of Washington v. Gunther, FED. B. NEWS & J., September 1981, at 183.

Bureau of National Affairs, The Comparable Worth Issue (1981).

Bureau of National Affairs, Pay Equity and Comparable Worth (1984).

Comment, Comparable Worth, Disparate Impact, and the Market Rate Salary Problem: A Legal Analysis and Statistical Application, 71 CALIF. L. REV. 730 (1983).

Ramey, The Price of Equality, 4 CALIFORNIA LAW. 20 (1984).

Siniscalco & Remmers, Comparable Worth in the Aftermath of AFSCME v. State of Washington, 10 EMPLOYEE REL. L.J. 6 (1984).

Thomas, Pay Equity and Comparable Worth, 34 LAB. L.J. 3 (1983).

PAY SETTING IN THE GS AND FWS SYSTEMS

Both white and blue collar federal pay are presently governed by the principle of comparability with the private sector. The Federal Salary Reform Act of 1962 established the principle that federal salary rates for white collar employees under the GS system should be comparable with private enterprise rates for the same levels of work. This principle has been retained in subsequent legislation dealing with pay comparability.

The Federal Pay Comparability Act of 1970 established three principal groups to carry out the comparability process--the President's pay agent, The Federal Employee's Pay Council, and the Advisory Committee on Federal Pay. The Directors of OPM and OMB and the Secretary of Labor jointly serve as the President's pay agent for setting and adjusting pay for federal white-collar employees. The Bureau of Labor Statistics conducts a survey of professional, administrative, technical, and clerical salaries in the private sector, which it forwards to the pay agent for consideration. The pay agent, in consultation with the Federal Employees Pay Council, determines the criteria for comparability and develops the annual rate proposals. The pay agent submits pay under the General Schedule with the rates of pay for the same levels of work in the private sector as determined by the survey.

The Federal Pay Comparability Act of 1970 also established an Advisory Committee on Federal Pay, composed of three members who are not employees of the federal government. The Advisory Committee's purpose is to provide the President with independent third-party advice on the pay proposals, considering the recommendations of the President's pay agent and the Federal Employees Pay Council.

After considering the report of the pay agent encompassing the findings and recommendations of the Pay Council, and the Advisory Committee report, the President must either agree to the comparability pay adjustment recommendation to take effect in October or submit an alternative plan to the Congress which would go into effect unless a majority vote of either House disapproves it. If the alternative plan is disapproved, the President is required to make a comparability adjustment based on the reports of the pay agent and the Advisory Committee according to the statute's principle of comparability. For the past 7 years, the President has not agreed to the pay adjustment recommendation of the pay agent and has submitted an alternative proposal. These proposals have never been overridden by the Congress.

The Congress established the Federal Wage System (blue-collar) in 1972 (5 U.S.C. 5341 et. seq.) and enacted principles, policies, and processes into law which previously had been handled administratively. The law establishes the policy that pay rates for blue-collar employees be fixed and adjusted from time to time to be consistent with local prevailing rates. The law provides that pay rates be based on the following:

--There will be equal pay for substantially equal work for employees working under similar conditions within the same local wage area.

--There will be relative differences in pay within a local wage area when there are substantial or recognizable differences in duties, responsibilities, and qualification requirements among positions.

--The pay levels will be maintained in line with prevailing levels for comparable work within a local wage area.

--The pay levels will be maintained to attract and retain qualified employees.

Under the Federal Wage System, wage rates for blue-collar employees are established in 137 geographic areas in the continental United States, Alaska, Hawaii, Guam, and Puerto Rico. Within each area, OPM has designated areas in which annual surveys are made of wage rates paid by private sector establishments for selected jobs common to both industry and Government.

LIST OF ORGANIZATIONS/INDIVIDUALS CONTACTED AND PARTICIPANTS ON PANELS

FEDERAL GOVERNMENT

Equal Employment Opportunity Commission
Office of Personnel Management
Department of Labor
Department of Justice
Civil Rights Commission

STATE AND LOCAL ORGANIZATIONS

Council of State Governments
National Governor's Association
National Conference of State Legislatures
National League of Cities

EMPLOYEE ORGANIZATIONS

The National Treasury Employees Union
The National Association of Government Employees
The American Federation of Government Employees
The National Federation of Federal Employees
American Federation of State, County and Municipal Employees

PROFESSIONAL ASSOCIATIONS

International Personnel Management Association
American Compensation Association
Classification and Compensation Society
Association of Technical and Supervisory Professionals
Professional Managers Association
Federal Bar Association
Federal Executives and Professionals Association
Professional Engineers in Government
American Foreign Service Association
National Association of Federal Veterinarians
Patent Office Professional Association
Federally Employed Women
Senior Executives Association
Social Security Managements Association

BUSINESS ORGANIZATIONS

Equal Employment Advisory Council
U.S. Chamber of Commerce

JOB EVALUATION EXPERTS

Hay Associates
Norman D. Willis and Associates, Inc.
Booz. Allen and Hamilton, Inc.
Arthur Young and Company
The Wyatt Company
Halcrest-Craver Associates, Inc.
Hubbard, Givens & Revo-Cohen

WOMEN'S ORGANIZATIONS

National Committee on Pay Equity
National Commission on Working Women
National Organization for Women
National Women's Political Caucus

EXPERTS PARTICIPATING ON STATE PAY EQUITY ACTIVITIES PANEL HELD DECEMBER 17, 1984

Dr. Keon S. Chi is a Policy Analyst for the Council of State Governments in Lexington, Kentucky. Dr. Chi has written several articles for council publications on comparable worth activities in the states and has recently been involved in a council-sponsored survey of state personnel activities which included comparable worth.

Dr. Alice H. Cook is Professor Emerita from Cornell University's School of Industrial and Labor Relations. She has written Comparable Worth: The Problem and States' Approaches to Wage Equity. Dr. Cook is currently engaged in summarizing the results of 125 case studies (including 44 states) on comparable worth for publication. She has also written widely on union issues.

Dr. Elaine Johansen is Assistant Professor of political science at the University of Connecticut. Professor Johansen has written extensively about comparable worth, including a new book, Comparable Worth: The Myth and the Movement (1984). She is currently preparing a study of pay equity initiatives in state government.

Ms. Nancy Reder is Chair of the National Committee on Pay Equity. The committee has over 175 organizational and individual members and is the only national coalition working exclusively to achieve equal pay for work of comparable value. The committee, with the National Women's Political Caucus and the Comparable Worth Project, recently completed a survey of state and local pay equity initiatives (Who's Working for Working Women, 1984).

Dr. Helen Remick is Equal Employment Officer at the University of Washington; Seattle, Washington. She has edited a recent Temple University book, *Comparable Worth and Wage Discrimination: Technical Possibilities and Political Realities*, and has written on the Washington State experience in comparable worth. In addition, Ms. Remick has served as a consultant to several comparable worth studies and has provided expert testimony to legislators in the Pacific Northwest area.

Dr. Nina Rothchild is Commissioner for the Minnesota Department of Employee Relations. In her capacity as Commissioner, she is responsible for implementing pay equity legislation in the state of Minnesota.

Dr. Ronnie Steinberg is Senior Research Associate of the Center for Women in Government at the State University of New York at Albany. She was Research Director for the International Conference on Equal Pay and Equal Opportunity Policy: Western Europe, Canada, and the United States. Dr. Steinberg authored a report for the Organization of Economic Cooperation and Development on "Labor Market Inequality and Equal Opportunity Policy: A Cross-National Comparison", and has published a book, *The Growth of Wage and Hour Standards Laws in the United States, 1900-1973* (1980).

EXPERTS WHO PARTICIPATED ON FEDERAL PAY EQUITY OPTIONS PANEL HELD FEBRUARY 9, 1985, AND WHO REVIEWED A DRAFT OF THIS REPORT

Dr. Donald Treiman, Professor of Sociology at UCLA: Dr. Treiman worked on the National Academy of Science (NAS) committee which studied sex-based wage discrimination. He authored *Job Evaluation: An Analytic Review* and co-authored *Women, Work, and Wages*. *Job Evaluation* includes segments on the GS and FWS classification systems. He is also a member of the technical panel for the New York state comparable worth study.

Dr. Mark Killingsworth, Associate Professor of Economics, Rutgers: Dr. Killingsworth testified before the Joint Economic Committee on comparable worth. He has used the CPDF to model employment issues (e.g. promotions, rank, and pay) among a group of federal civilian employees.

Dr. George Borjas, Professor of Economics, University of California at Santa Barbara: Dr. Borjas has used the CPDF to examine wage differentials in the federal sector. A 1983 paper he authored reports interagency variations in employment policies within the federal government.

Dr. Heidi Hartmann, economist at the National Academy of Sciences: Dr. Hartmann worked on the NAS committee which studied sex-based wage discrimination and co-authored Women, Work, and Wages. She is currently editing a volume on comparable worth.

Dr. Donald Schwab, Professor of Business Research and Industrial Relations, University of Wisconsin: Has written extensively on the issue of comparable worth. For example, he wrote chapters in the 1980 Equal Employment Advisory Council book and in the 1984 U.S. Civil Rights Commission compendium.

Mr. Philip Oliver, was the Director of the Job Evaluation and Pay Review Task Force (1970-1972) that laid the foundation for the federal Factor Evaluation System (FES). He was also the Director of Management Systems, Office of the Comptroller, U.S. Department of Labor.

In addition, Dr. Ronnie Steinberg, noted above as a participant on the state's panel, reviewed a draft of this report.

National
Legal Center
for the Public Interest

JUDICIAL WAGE DETERMINATION....
....A VOLATILE SPECTRE

PERSPECTIVES ON COMPARABLE WORTH

by

FRANK C. MORRIS, ESQ.
JUNE A. O'NEILL, PH.D.
JESSE M. CALHOON
JOHN SLOAN, JR.
SAMUEL R. MITCHELL

and

TYRONE C. FAHNER
Former Attorney General For
The State of Illinois

Introduction
by
LINDA CHAVEZ
U.S. Commission on Civil Rights

TABLE OF CONTENTS

ABOUT THE AUTHORS .... Page iii

PREFACE by Ernest B. Hueter .... Page v

COLLEAGUE LETTER
by Congressman F. James Sensenbrenner, Jr. .... Page vi

INTRODUCTION by Linda Chavez .... Page vii

A LEGAL PERSPECTIVE
by Frank C. Morris, Jr. .... Page 1

AN ECONOMIC PERSPECTIVE
by June A. O'Neill, Ph.D. .... Page 27

A LABOR PERSPECTIVE
by Jesse M. Calhoon .... Page 39

AN INDEPENDENT BUSINESS PERSPECTIVE
by John Sloan, Jr. .... Page 45

A CORPORATE PERSPECTIVE
by Samuel R. Mitchell .... Page 51

A PERSPECTIVE OF STATE GOVERNMENT
by Tyrone C. Fahner .... Page 59

© 1984 National Legal Center for the Public Interest
Library of Congress Catalog Number 84-061725
ISBN Number 0-9603894-7-4
Published August 1984

ABOUT THE AUTHORS

LINDA CHAVEZ, a Democrat, was appointed by President Reagan to serve as Staff Director of the newly constituted U.S. Commission on Civil Rights. Previously, Ms. Chavez was the first woman to head the former Civil Rights Commission as Staff Director. During the Carter Administration she served as a consultant to the President's Reorganization Project of the Office of Management and Budget, as well as serving as the assistant to the Deputy Assistant Secretary for Litigation (Education), Department of Health, Education and Welfare.

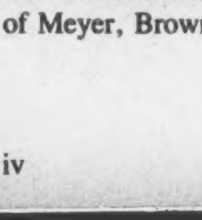
FRANK C. MORRIS, a Washington lawyer, received a B.S. degree with distinction from Northwestern University and a J.D. from the University of Virginia where he received the Earle M. Schave Award for distinguished work in labor law. Mr. Morris worked as an attorney with the National Labor Relations Board in the Enforcement Litigation, Appelate Court division. Presently, in private practice, Mr. Morris is an Adjunct Professor of Law at George Washington University, a faculty member of Cornell University's Industrial and Labor Relations E.E.O. Program and has published many works dealing with labor-related issues.

JUNE A. O'NEILL, is the Program Director for the Urban Institute's Program of Policy Research on Women and Families. Dr. O'Neill received her Ph.D. in Economics from Columbia University. She has served as Chief of the Human Resources Cost Estimates Unit of the Congressional Budget Office and was also the Senior Staff Economist for the President's Council of Economic Advisors (1971-1976) specializing in labor and income security program issues. Dr. O'Neill has testified before both Houses of Congress on numerous occasions, often on the subject of comparable worth, was a Research Assistant for the Brookings Institute and has authored many publications.

JESSE M. CALHOON has been President of the National Marine Engineer's Beneficial Association, AFL-CIO since 1963 and is also the President of that association's District No. 1-Pacific Coast District. Through his involvement in two Presidential Advisory bodies, the President's Export Council and the National Productivity Advisory Committee, Mr. Calhoon is actively assisting the cause of United States efficiency in world trade. Additionally, Mr. Calhoon is a member of the Maritime Advisory Committee established by the Secretary of Transportation, and acts as an advisor to the Maritime Administrator on the promotion of the American Maritime industry.

JOHN SLOAN, Jr., is the President and Chief Executive Officer of the National Federation of Independent Business. He is presently serving his third term as Chairman of the National Advisory Council of the Small Business Administration. Previously, he was the Chairman of the Small Business Liaison Committee of the U.S. Chamber of Commerce.

SAMUEL R. MITCHELL is the President of the Chicago Association of Commerce and Industry, the largest regional Chamber of Commerce in the country. Throughout a career dedicated to improving corporate functioning, Mr. Mitchell has held various management positions such as heading the Hardware Show of the National Hardware Manufacturers Association, as well as belonging to numerous professional societies and charitable boards.



TYRONE C. FAHNER, the former Attorney General of the State of Illinois, graduated from the University of Michigan, received his J.D from Wayne State University and his LL.M. from Northwestern. Mr. Fahner's intimate knowledge of the workings of state government is also derived from the part of his legal career spent as the Assistant U.S. Attorney for the Northern District of Illinois, and as the Director of the Illinois Department of Law Enforcement. Mr. Fahner is presently a partner in the Chicago law firm of Meyer, Brown & Platt.

PREFACE

The U.S. House of Representatives overwhelmingly passed, just before the July recess, HR 5680—"The Federal Pay Equity and Management Improvement Act of 1984." The bill includes segments of the previous Oakar Bill on comparable worth, one of which mandates an OMB-initiated study of the worth of federal jobs. It was a study of precisely this nature that led to a billion-dollar judgment against the State of Washington. That judgment is presently on appeal.

Such a study, designed to achieve "economic democracy," if conducted, is destined to lead to judicial wage determinations.

Comparable worth is a doctrine concerned only with results. Hence, liability could be imposed without any showing of an intent to discriminate. It is a group-based doctrine rather than an individually based civil right as is equal pay for equal work.

The concept has attracted a great deal of attention this election year as an objective of the equal rights movement. To date too little consideration has been given to its ramifications. How does one implement a comparable worth standard in a free society other than through the market? Would it involve the country in still another area of subjective policy-making?

This monograph is intended to bring to light the effect of comparable worth from several different perspectives: economics and law, business, both small and large, labor, and state government. This is a portfolio of considerations which should not be ignored.

Our policy-makers should give serious heed to the viewpoints of these authors when considering legislation on any aspect of comparable worth.

Ernest B. Hueter
President
National Legal Center
For the Public Interest

F. JAMES SENSENBRENNER, JR.
NINTH DISTRICT, WISCONSIN

COMMITTEE ON THE JUDICIARY
COMMITTEE ON SCIENCE AND
TECHNOLOGY

WASHINGTON OFFICE:
ROOM 315
CANNON HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
202-225-5101

DISTRICT OFFICE:
120 BISHOPS WAY
BROOKFIELD, WISCONSIN 53005
414-784-1111

Congress of the United States
House of Representatives
Washington, D.C. 20515

Dear Colleague:

From time to time the National Legal Center for the Public Interest publishes insightful commentaries on issues of public concern. The latest monograph in the Judicial Series produced by the Center explores the comparable worth issue from several diverse perspectives.

Comparable worth is a notable proposition deserving of informed consideration and debate. The treatment that the Center gives this complex issue should help Members understand the ramifications of the adoption of a system of comparable worth and may help us avoid some of its pitfalls. I commend this monograph to your attention and hope that it will contribute to your understanding of this critical issue.

I congratulate the National Legal Center for the Public Interest for making this timely study available.

Sincerely,

F. JAMES SENSENBRENNER, JR.,
Member of Congress

FJS:as

INTRODUCTION

LINDA CHAVEZ
Staff Director
U.S. Commission on Civil Rights

Equal pay for work of comparable value is fast becoming the civil rights issue of the 1980's. Although legislation mandating equal pay for work of comparable value has been enacted by one state, several bills that would apply the principle nationally are pending before Congress. Comparable worth advocates argue that only through such legislative initiatives, or through court decisions that apply a comparable worth interpretation to existing anti-discrimination law, will the problems of sex discrimination in employment be fully eliminated. They point to disparities in income between men and women and to the heavy concentration of women in certain occupations as proof that sex discrimination continues unabated. To date, the proponents of comparable worth have been relatively unsuccessful in getting state legislatures and judges to adopt their views. But so successful have they been in their rhetoric that it is now a commonly accepted "fact" that women earn 62 cents for every dollar that men earn.

Why have comparable worth advocates met so little resistance? In part because the memory of blatant sex discrimination in employment is still fresh in our minds. In part, I think, because the egalitarian instinct in this country is so strong that simply pointing to continuing disparities in wages between groups of people stirs in many of us a sense that something must be done to eliminate such differences. But perhaps most importantly the phenomena that the advocates point to as proof of discrimination—earning disparities and job segregation—are complex in origin although they may have little to do with the discrimination they purport to demonstrate.

Ironically, comparable worth has caught on at a time when many sex stereotypes in employment have broken down and when women are making enormous strides in entering previously male-dominated professions such as medicine, the law and engineering. Yet, many more women continue to seek jobs in female-dominated professions as secretaries, teachers, nurses, and retail clerks. They have done so, in part at least, because these jobs allow them to balance family responsibilities with work outside the home; and most working women will at one time or another be wives and mothers as well. Either because the hours are flexible or short, or because there is relatively little penalty in leaving the profession for some period during the child-bearing years, these jobs retain their appeal for the many women who wish to or must work but still retain primary responsibility for the care of their dependent children. Moreover, even those women who enter non-traditional fields, earn over their lifetime less than men in those jobs. Again, these women's role in the family is often the source of the disparity in earnings, since like their counterparts in the more traditional jobs, they, too, will often take time off to bear and raise children. Indeed, family status appears to be the single most important factor affecting the pay differential between men and women when education, training and hours worked are accounted for.

If family status explains both a good deal of the earnings differential and much of occupational segregation, perhaps the proponents of comparable worth have seized upon a conundrum pitting motherhood against the marketplace. Yet, one wonders if both motherhood and our economy won't suffer if comparable worth pay schemes replace the mechanisms of the free market.

A LEGAL PERSPECTIVE

COMPARABLE WORTH-A RETURN TO THE DISCREDITED DOCTRINE OF SEPARATE BUT EQUAL

FRANK C. MORRIS, JR.
Member

Epstein Becker Borsody & Green, P.C.
Washington, D.C.

INTRODUCTION

There has been a major outcry recently for "pay equity". This is nothing more than a clever co-opting of a term by advocates of the comparable worth theory to hide the true meaning of comparable worth. Its proponents claim that the continuing wage gap between the average male and female's wages is based on discrimination. This alleged discrimination is reputedly a product of society's so-called historical devaluation of "women's work" and the segregation of women into certain occupational fields. Comparable worth is a panacea to overcome these evils wrought by a male-dominated society. In reality, however, comparable worth is nothing more than a proverbial snake oil that would not only harm its intended beneficiaries, but also the American free market economy and the Federal judicial system.

In this article, it will be demonstrated that adequate remedies already exist to insure integration of women into the total workforce and that a woman can and will be considered for any job based on her ability and not her sex. This insures true pay equity. Comparable worth, if adopted, would preserve *separate but equal* within the workforce—a pernicious doctrine denounced by the Supreme Court about thirty years ago, because separate can never be truly equal.

As can readily be seen in the brief background section, women have made significant progress since the enactment of the Equal Pay Act and Title VII legislation scarcely twenty years ago. No one can deny, based on the statistics and first-hand experience, that the workforce has become significantly more integrated over the past two decades with women making dramatic inroads in executive, managerial and the whole range of "nontraditional" job categories.

Section two of the article examines the comparable worth theory with particular emphasis on the consummate doctrine as expoused by Ruth Blumrosen. She asserts that job segregation and wage discrimination are correlated. Blumrosen bases her belief on the purported "scientific" proof that twenty percent of the gap in wages between the average male and female is due to discrimination. She relies heavily on multiple regression analysis to statistically demonstrate this discrimination—a process which is far from error-free. Under her theory, courts should presume discrimination whenever a female is in a job category which is at least 70% female. The doctrine requires the development of a bias-free objective job evaluation system—something which experts agree is unobtainable. As an alternative, she suggests that the courts decide the subjective worth of a job to an employer. And, of course, the comparable worth advocates reject the value placed on different jobs by the labor market in a given locale.

The article reviews the legal background in the area of wage discrimination. As the courts have found, there are numerous reasons for overrepresentation of females in certain jobs—one of the most important being individual choice. Moreover, there are clearly appropriate remedies in place if discrimination against the female, as an individual, takes the place in the employment arena. As can readily be seen, in adopting the comparable worth theory, the focus shifts from the individual to the group. Our society, which has historically emphasized the rights of the individual, is being told that such emphasis is misplaced—because, to support the doctrine of comparable worth, one must view women as a class, not as individuals. The very stereotyping condemned by the comparable worth advocates is relied upon to support the need for their doctrine. When they speak of pay equity, it is for females as a group—not as individuals. The individual female is already adequately protected by Title VII and the Equal Pay Act.

Comparable worth is a phony solution to so-called job segregation because it results in leaving women in a few occupations (or males squeezing them out because of artificially raised wages). Women could freely opt to remain secretaries and nurses while demanding pay equal to skilled craft workers based on supposed comparable worth to the employer. There would be no incentive for them to enter the high-risk, less desirable, albeit better paying positions predominantly occupied by men. Comparable worth thus would perpetuate job segregation which otherwise is being effectively eliminated through Title VII, affirmative action under Executive Order 11246 and local and state fair employment laws.

Finally, we address the monumental administrative difficulties of adopting such a doctrine that would wreak havoc on the American economy. It would eliminate all consideration of the marketplace, make federal judges full-time but untrained arbiters of job value while clogging an already overburdened judicial system and result in a totally regulated as opposed to a free economy—one less able to compete internationally. It would sacrifice the rights of the individual for the theoretical good of the class. But most importantly of all, it would serve to bring American society back full circle to a doctrine which it rightly disowned thirty years ago. It would mark implicit acceptance of a system of separate but equal—a system found repugnant by the Supreme Court and the nation after a lengthy and painful experience.

I. BACKGROUND

During the final throes of a heated debate in the House over the bill which ultimately became the Civil Rights Act of 1964, a provision prohibiting sex discrimination was added. Prior to this, the precursor of Title VII had been aimed solely at redressing race discrimination; little consideration was given to sex discrimination. It was only on the final day of debate that the subject of sex discrimination was raised and then only for the avowed purpose of derailing passage of the bill. Despite the last ditch attempt by its opponents, however, the bill, with the addendum, was approved and enacted.

Since this haphazard beginning, very substantial progress has been made in the important task of eliminating sex discrimination in employment. Numerous barriers based on sex have been knocked down allowing significant strides to be made in sexually integrating the workforce at every level. For example, in such formerly male-oriented occupations as bank officials/financial managers, the percentage of females in 1960 was 12.2%. In 1980, 33.6% of all members of this occupation were female. In the classification of protective services (police, guards, firefighters) the percentage of females was 4.1 in 1960. In 1980 it had almost tripled to 11.8%. Sales Managers/Department Heads (Retail) rose from 28.2% in 1960 to 40.5% in 1980. A recent study comparing 1970 and 1980 occupational data found that the most significant change in the sex distribution was in the key category of "executive, administrative and managerial" occupations. While women represented only 18% of the group in 1970, by 1980 their representation was at 30.5%.[1] Moreover, a sizeable increase overall has taken place in women's wages. The difference in wages between men and women in the 1970's was 59¢—i.e., a woman received 59¢ for every dollar received by a man. In 1983, women earned 66.2% as much as the average male.[2]

Yet despite the significant gains made in barely two decades, concern has been raised by women's groups over the residual gap in wages. Much dissatisfaction has been registered concerning the overall gains achieved during the past twenty years. It is argued that women continue to be "segregated" into a few job occupations and that there are still positions characterized as women's work as opposed to men's work. For example, the secretarial field continues to be a woman's domain while the construction trades remain predominantly male. Moreover, it is alleged that there is a persistent stereotyping of positions into women's work vs. men's work by employers in determining the wages for various job categories.

---

[1] R. Williams & L. Kessler, *A Closer Look at Comparable Worth* 78 n.7 (1984).

[2] *Id.* at 5-6.

One cannot objectively deny that women continue to fill, in large percentages, the low-wage jobs in the economy. Nor can one disclaim the fact that it was not until the late 1960's, after the passage of Title VII, that help wanted ads in newspapers stopped being segregated by sex. It has been alleged that women's work has historically been devalued and thus jobs so characterized result in lower wages for those who occupy them. Because most women work in "women's" positions, the lower rates for women as opposed to men have been perpetuated—i.e., a self-fulfilling prophecy. One means of redressing this purported "discrimination" which has been increasingly ballyhooed is the so-called comparable worth theory.

II. COMPARABLE WORTH THEORY

The Doctrine of Comparable Worth

The comparable worth doctrine has been heralded as *the* EEO issue of the '80s. However, the concept of comparable worth is not a new one. The National War Labor Board had regulations which required equal pay for comparable work. The Board conducted job evaluations to detect pay inequities within a plant between dissimilar jobs. Based on these evaluations, recommendations were made to the industry concerning adjustments in wage rates. As a result, in every Congress since 1945, legislation has been introduced which incorporated the requirement of equal pay for comparable work,[3] and such legislation has consistently been rejected. Congress has squarely addressed and repudiated the doctrine of comparable worth as recently as 1978, while enacting the Civil Service Reform Act. Under the heading of merit principles for Government employment, Congress mandated the notion of equal pay which included an express utilization of marketplace factors[4], consideration of which is anathema to comparable worth doctrine advocates.

Comparable worth is not equal pay for equal or substantially identical work, though it is often confused with the concept of equal pay. Comparable worth advocates foster this confusion by contending that comparable worth would bring purported "pay equity". Equal pay espouses the sound doctrine that when a male and female perform identical or nearly identical duties they should be equally compensated. This doctrine is objective not subjective. It is mandated by the Equal Pay Act.[5]

Comparable worth, on the other hand, is substantially subjective in nature. It looks at two completely dissimilar jobs and asks what is each of the jobs' theoretical value to the employer. Its advocates say that jobs of supposed equal worth should be paid equally without any regard to their relative values in the marketplace.[6] Comparable worth is to be determined through use of some job evaluation plan. Valued job features are identified—skill, responsibility, effort, working conditions—and relative weights are accorded them. There are a myriad of job evaluation systems in use today ranging from a simple, nonquantitative ranking of the overall job within the organization to the highly sophisticated factor evaluation system which employs benchmarks for use in job analysis and comparison.

---

[3] *County of Washington v. Gunther*, 452 U.S. 161, 185 n.1 (1980) (Rehnquist, J., dissenting).

[4] U.S.C. § 2301(b)(3) (1982).

[5] Codified at 29 U.S.C. § 206(d) (1982).

Job Evaluation Systems

All job evaluation systems, whether simple or complex, suffer from the same weakness—subjective judgment.[7] No matter how highly developed, the bottom line is that all job evaluation systems are inherently judgmental—the overall evaluation of the job is based on a series of individual decisions about the value of particular components of the position. The point value evaluation system can be utilized to demonstrate this shortcoming. Under this system, some value is assigned to each of the factors identified for analysis and the overall evaluation is determined by totaling all of the points assigned. For example, if working conditions is the factor being analyzed, the job evaluator must determine how many points to assign after considering the location and environment of the position, the risks involved, etc. and perhaps even comparing the actual conditions to sample descriptions or benchmarks. Do the working conditions fit within the scope of the benchmark for a 4 point value or do they fall between two benchmarks, thus requiring extrapolation on the part of the evaluator? To compound the problem, no one system of job evaluation meets all of an employer's needs.[8] Moreover, a job evaluation system which works well within one industry may not be useful in a related industry.[9]

---

[6] One of the fundamental criticisms leveled at the comparable worth doctrine is that it completely ignores the fact that there is a different market for different jobs. For whatever reasons, shortages or surpluses exist for various jobs and wage rates reflect these forces of supply and demand. O. Bergren, "A Business Viewpoint on Comparable Worth" in *Equal Pay for UNequal Work* 207, 213 (P. Schlafly ed. 1984).

[7] The comparable worth theory was endorsed by a study conducted by the National Academy of Science's Committee on Occupational Classification and Analysis, entitled *Women, Work, and Wages: Equal Pay for Jobs of Equal Value* (D. Treman and H. Hartmann eds. 1981) [hereinafter referred to as the NAS report]. The Academy was commissioned by the EEOC to conduct a study on certain comparable worth issues, to include the feasibility of a bias-free job evaluation system—a necessary prerequisite to any attempt to apply the comparable worth theory. As one of the co-editors of the study states: "In its report, the Committee stresses that there is no strictly scientific method for determining the standards of job worth. *What a job should be worth is not a scientific question*." H. Hartmann, "The Case for Comparable Worth" in *Equal Pay for UNequal Work* 11, 16 (P. Schlafly ed. 1984) (emphasis added).

The Classical Comparable Worth Argument—The Blumrosen Article

Some advocates of comparable worth argue that the courts should become the arbiters of what a job's value is to an employer. As an objective and neutral outside body, it is maintained that the courts can make such a judgment without bias. At best, however, such an approach only substitutes the subjectivity of the individual judge for that of the individual evaluator, and ignores that most federal judges have neither the training nor experience in job evaluation or unlimited time for such an arcane task. Moreover, such an approach would guarantee forum shopping because two judges could readily reach dissimilar results in arriving at the overall worth of a job.

One of the leading advocates of the comparable worth theory and of judicial determination of the value of a job is Ruth G. Blumrosen. In a lengthy article,[10] she presents the classical case for the doctrine of comparable worth. Her article asserts that job segregation and wage discrimination are intimately related—there is a demonstrable correlation between sex-segregated jobs and lower wages. Under her thesis, to demonstrate a prima facie case of illegal wage discrimination, plaintiffs need only show that they occupy a position which has been or is segregated. A job is considered segregated under her theory if 70% or more of its occupants are women.

She asserts that the pattern of job segregation by sex is well known. Teachers are women while the principal is a male. Doctors are typically men, nurses are females. Work has been compartmentalized based on sex.

---

[8] Within the Federal Government there are several different evaluation systems used for the workforce. The most common, known as the Factor Evaluation System, permits the classifier to use benchmarks and assign points based on his/her analysis of nine various components: knowledge (which receives a double weighting); supervisory controls; guidelines; complexity; scope and effect; personal contacts; purpose of contacts; physical effort and working conditions (the weight of the last two being negligible as they never serve alone to change the grade assigned a position). In a more sophisticated system utilized for scientific and engineering positions involving research, commonly called the Factor Four system, the evaluator examines three of the four factors used: nature of assignment; amount of supervision; and guidelines/originality. However, the fourth factor, quality of scientific contributions, is determined based on a rating assigned by a peer review panel. Finally, the Government utilizes certain narrative standards to determine the grades of positions such as personnelists by evaluating the nature of the assignment and the level of responsibility.

[9] For example, the job evaluation system developed for the steel industry was found to be unsuitable even for another metal fabricating industry, the aluminum industry. Nelson, Opton, & Wilson, *Wage Discrimination and the "Comparable Worth" Theory in Perspective*, 13 U. Mich. J.L. Ref. 223, 225 n.101 (1980) [hereinafter cited as *Comparable Worth Theory in Perspective*].

[10] *Wage Discrimination, Job Segregation and Title VII of the Civil Rights Act of 1964*, 12 U. Mich. J.L. Ref. 397 (1979) [hereinafter cited as *Wage Discrimination*].

Even today, she maintains most women continue to work in women's jobs despite major movement into nontraditional formerly male positions.[11]

Moreover, there has been a devlauation of women's work, she argues, because historically society has tended to value men and male activities more highly than women and their activities. Women's real work has always been viewed as the home and family—it is the man who is the breadwinner while the female is simply a secondary source of income. Where jobs are identified as appropriate for women there is an inherent belief that they are of lesser value than those available for men. Therefore, she argues that where job segregation exists, the wages paid to the holders of such jobs have been depressed because of the female status of the position.[12]

Most importantly, Blumrosen rejects the use of marketplace considerations in setting wages. The marketplace, she posits, only serves to perpetuate stereotypes of what is considered women's work and continues to reflect the biases which devalue such work.

Thus, the only avenue available for relief under Blumrosen's theory is the judiciary. Recognizing that the amount of the residual wage differential allegedly attributable to discrimination may not be precisely determinable, she argues that the courts have several available remedies. They can apply the hypothesis that 20% of the gap in the wage differential is attributable to discrimination, they can correlate the supposed worth of jobs to various classifications found in the Federal civil service, or they can reform a discriminatory job evaluation system utilized by the employer and apply the revised system to reevaluate the segregated positions.

---

[11] Judge Barbara Crabb considered and rejected Blumrosen's assumption that job segregation was attributable mainly to discrimination. In *Briggs v. City of Madison*, 536 F. Supp. 435 (W.D.Wis. 1982), she stated:

> "I find unpersuasive the basic premise that Blumrosen or any one possesses the intellectual tools and data base that would enable them to identify the extent to which the factor of discrimination has contributed to, or created, sex-segregated jobs, and to separate that factor from the myriad of nondiscriminatory factors that have contributed to the same result." *Id.* at 444.

Crabb goes on to list nondiscriminatory factors which would contribute to job segregation: familial and peer expectations, the desire for part-time and flexible work hours, reluctance to enter nontraditional fields and the absence of role models in nontraditional occupations. *Id.* at 444-45 n.6.

[12] Judge Crabb, in *Briggs*, also forcefully rejects this contention—i.e., that there is a direct correlation between lower pay scales for certain positions and the fact they are characterized as "women's work". She notes that while there is probably some correlation, there are other possible determinative factors which include "crowding" (i.e., a heavy concentration of women available for the same job), the unwillingness of women to organize for higher wages and the fact that many of the jobs characterized as women's work are those which have never been well paid whether filled by men or women. As examples, she cites teaching and the ministry—positions not held primarily by women. *Briggs*, 536 F. Supp. at 445 n.7.

Alleged Proof of Discrimination Through Multiple Regression Analysis

In order to support scientifically the theory that the gap in average wages between women and men is due to discrimination, Blumrosen and others rely on the human capital model of earnings. The theory is predicated on the assumption that people will be paid the same for the same productivity. If they are compensated differently, then the differential is to be taken as a measure of discrimination.

In applying this theory, a job is broken up into different components or attributes which are thought to cause differences in productivity (e.g., education, experience, etc.) along with worker characteristics which might affect productivity (e.g., willingness to travel, ability to work long hours, etc.). Then the statistical technique known as multiple regression analysis is applied by the statistician to estimate what earnings would have been if the employees were identical in every aspect save one—the variable of interest, i.e., sex.

This statistical technique, however, has its drawbacks. It makes certain critical assumptions which are far from valid. For example, it assumes linear correlations. Breaking down the component of education into the number of years of school attained, the multiple regression approach essentially treats the difference between a second and eighth grade education (i.e., six years) the same as the difference between a ninth grade education and that level attained by a junior in college (i.e., six years).

Another major problem with the multiple regression theory is identification of all legitimate factors affecting earnings. Typically, factors identified include seniority, education, training, work experience, etc. In order to be able to attribute the residual in the wage gap to alleged discrimination, none of the statistically significant variables may be omitted. Unless all nondiscriminatory factors which affect earnings are controlled for, the assumption that the residual is the product of discrimination is invalid.[13]

Moreover, it does not necessarily distinguish between legitimate factors which are not possible to measure. For example, it cannot supply an objective numerical value to the difference in education between a banker with an MBA and one who has a Master of Arts in philosophy.[14] Thus, the unexplained differential in wages consists not only of any effects allegedly due to discrimination but also of all legitimate factors not identified plus those legitimate factors identified but not more precisely measurable.

---

[13] One commentator cites as an example of a job characteristic frequently neglected—that of job-related accidents and injuries. He notes that in those industries where accidents are more prevalent, wages are generally higher than in risk-free industries. Most importantly, men are concentrated in occupations which are considered more "dangerous". The premium paid due to the risk of job-related injury and illness may account for 6% of the earnings gap between the sexes; yet this is one variable often missed in multiple regression analyses. M. Finn, "The Earnings Gap and Economic Choices" in *Equal Pay for UNequal Work* 101, 110 (P. Schlafly ed. 1984).

[14] *Comparable Worth Theory in Perspective*, *supra* note 9, 251 n.85; M. Finn, *supra* note 13, at 107-108.

Comparable Worth—Another Way To Describe Separate But Equal

Finally, and most importantly, multiple regression analysis cannot differentiate between job segregation based on the decision of employers and that which exists by choice of the individual. Rather, the broad assumption is made that all job segregation is based on employer discrimination instead of on voluntary choice of the individual who is discriminating in the selection of a position he/she is willing to accept. Whether male or female, individuals have been "conditioned" as to desirableness of certain types of work. For example, white collar work is usually considered more prestigious than blue collar work. Moreover, in our society, as in any society, women previously have been programmed to enter certain vocations as opposed to others. If the job of construction worker continues to be predominantly male, this fact could be mostly attributable to two very different reasons—the employer's rejection of qualified female applicants or to the lack of female applicants. Clearly, if the former is true the employer should be and would be held responsible under existing Title VII precedent for his discrimination; but he can hardly be called to task for the latter condition.[15] Title VII thus already removes the segregation component which is the linchpin of the comparable worth theory.

It is obvious from the foregoing that the residual in wage differential not accounted for under the multiple regression analysis applied to the human capital theory model cannot simply be assumed to be the measure of discrimination. The twenty percent gap routinely attributed to discrimination by comparable worth advocates is hardly free from error because the statistical analysis cannot measure all legitimate factors, nor ensure identification by the user of all legitimate factors and fails to take into consideration the most important factor of all—that of individual choice. Nevertheless, the comparable worth advocates continue to argue that the residual but narrowing gap in wages between the sexes is attributable to discrimination[16] and they disingenuously promote the theory of comparable worth as the way to redress this alleged discrimination.

---

[15] *Comparable Worth Theory in Perspective, supra* note 9, at 239 n.23, 252 n.88. An excellent example of this is cited in an article by Eliza Paschel, who supervised a compliance unit for the Atlanta office of the EEOC. Specifically, she details how her friend was the first woman elected to a county Board of Supervisors. A group of women came to register a complaint about the fact that truck drivers who were only required to have licenses and not be high school graduates were being compensated more than secretaries of the county who had to have high school diplomas. When questioned why the women did not simply apply for trucking positions they cited variously perceived "negative" aspects of the position. It never occured to them that one of the reasons for the wage differential between the secretarial and truck driver positions was because of the perceived unpleasantness of the position. The county, to overcome this perception, had to offer more money to attract applicants. E. Paschall, "Equal Opportunity Through Non-Discrimination" in *Equal Pay for UNequal Work* 35, 45 (P. Schlafly ed. 1984).

As previously mentioned in this article, advocates of comparable worth fail to acknowledge, let alone take into account, that part of job segregation is due to the female's own choice. Comparable worth, if adopted, would perpetuate job segregation because women could pick and choose among desirable positions, i.e., low-risk, regular hours, clean, etc., assured of being paid wages equal to those provided for highly unpleasant positions. There would be no incentive for many women to integrate into such occupations as the construction trades, or occupations requiring heavy physical exertion. Thus, in the final analysis, comparable worth would effectively perpetuate the job segregation which its proponents have so forcefully denounced. And in so doing it would have severe consequences on employers and the economy and the federal courts.[17] Clearly, it would foster a system of separate but equal, a doctrine found anathema by the Supreme Court and American society some thirty years ago.

III. LEGAL UNDERPINNINGS OF THE COMPARABLE WORTH DOCTRINE

It is clear that the Equal Pay Act ("EPA") does not provide a legal basis for the comparable worth doctrine despite the fact that it outlaws sex-based wage discrimination claims. The EPA provides that employers shall not discriminate on the basis of sex by paying different salaries for jobs which require equal skill, effort, and responsibility and which are performed under similar working conditions. Moreover, as the legislative history of the Equal Pay Act indicates, Congress considered and rejected the notion of equal pay for "comparable" work.

The Kennedy administration introduced the initial EPA bill and used a standard of equal pay for "work of comparable character on jobs, the performance of which, requires comparable skills."[18] The administration lobbied intensively for the "comparable" standard arguing that it could be determined "objectively" through job evaluation. When the bill was reported out of committee, an amendment was introduced by Representative Katharine St. George to restrict equal pay to situations involving equal work. Representative St. George stated that her objection was: "The word comparable opens up great vistas. It gives tremendous latitude to whoever is the arbitrator in these disputes."[19] The amendment was adopted by the House, and the Senate when considering the bill also rejected "comparable work" for the equal work standard. However, the enactment of the bill was delayed.

---

[16] At the conclusion of the NAS study, it was found that at least part of the earning gap between men and women was due to discrimination. Comparable worth advocates continue to cite the NAS report as proof of the need to apply comparable worth to overcome wage differentials based on discrimination.

What proponents fail to discuss about the study is some of its significant shortcomings which are admitted in the report itself. The report concedes that certain necessary assumptions were "never completely satisfied" leaving a key "degree of doubt as to the validity of the empirical findings regarding discrimination." Yet despite acknowledging such significant shortcomings in certain of its basic premises, the report nevertheless represents an endorsement of the comparable worth theory. NAS report, *supra* note 7, at 19 *See* M. Finn, *supra* note 13, *passim*.

[17] The last section of this article articulates the potential economic consequences of adoption of the comparable worth doctrine.

The following year, a co-sponsor of the EPA, Representative Goodell, stressed that it was important that the legislative history be clear on the point of comparable work. The narrowing from comparable to equal work, he asserted, meant that jobs reviewed under the act were to be substantially identical.[20] The Congress subsequently adopted the equal pay/equal work standard.[21]

The courts, in addressing claims filed under the EPA, have required that positions compared be "substantially equal". In many cases the courts have held that to meet the EPA standard the positions must be more than superficially identical, i.e., considered identical simply because they have the same job classification or title. Rather they must be substantially equal in skill, effort, responsibility and where performed—i.e., actual job requirements and performance. In *Horner v. Mary Institute,*[22] the court rejected allegations by a physical education instructor that her position was equal to that of a male physical education instructor who was paid more. Based on its review of the individual jobs' requirements, the court found that the male instructor was required to develop and implement a curriculum of physical education for children while the female was to teach courses already designated by someone else. Moreover, the court found that part of the differential in pay was based on what the male employee, because of his ability and experience, could command in the marketplace. Thus, the differential was based on a factor other than sex, as permitted under the EPA.[23]

---

[18] H. R. 8898, § 4, 87th Cong., 1st Sess.; H. R. 10226, § 4, 87th Cong, 2d Sess.

[19] 108 Cong. Rec. 14767 (1962).

[20] As Justice Rehnquist points out in *Gunther*, Representative Goodell rejected general wage comparisons between men and women. He stated:

> "We do not have in mind the Secretary of Labor's going into an establishment and saying, 'Look you are paying the women here $1.75 and the men $2.10. Come on in here, Mr. Employer, and you prove that you are not discriminating on the basis of sex.' That would be just the opposite of what we are doing." 109 Cong. Rec. 9208 (1963) *quoted in Gunther*, 452 U.S. at 187-88 n.3.

[21] According to Justice Rehnquist:

> "...Congress realized that the adoption of the comaprable-worth doctrine would ignore the economic realities of supply and demand and would involve both governmental agencies and courts in the impossible task of ascertaining the worth of comparable work, an area in which they have little expertise." *Gunther*, 452 U.S. at 184.

[22] 613 F.2d 706 (8th Cir. 1980).

In another pertinent case, *EEOC v. Universal Underwriters Insurance Co.*[24] the court stated that for purposes of the EPA, it is comparison of the total job, not individual segments of the job, which determines whether employees are performing substantially equal work. As a result, it found that supervisory male trainees were not performing substantially equal work as female clerks. While some females performed supervisory-like duties, e.g., review of work of other employees, that was the only segment of the two positions that was similar. The clerks were assigned particular tasks to perform; the trainees on the other hand rotated through various jobs. It is clear from the case law to date that the courts have followed Congress' intent and not attempted to utilize the EPA as a basis for enforcing the comparable worth doctrine.

There has been substantial litigation over the extent to which Title VII provides a basis for a comparable worth claim. Most of the litigation in the area revolves around the Bennett Amendment.[25] The dispute has centered on whether the Amendment restricts Title VII sex-based wage discrimination claims to those that can also be brought under the EPA, so that if not involving "equal work" a claim is excluded or whether the Amendment merely serves to incorporate into Title VII the four affirmative defenses of the EPA. If the former is true the claims for sex-based wage discrimination are cognizable under Title VII dispite the fact that no member of the opposite (male) sex holds an equal but higher paying job as long as the rate is not based on seniority, merit, quality/quantity of production or "any other factor other than sex."

---

[23] *See* 29 U.S.C. 206(d)(1)(iv) (1982).

[24] 653 F.2d 1243 (8th Cir. 1981).

[25] As noted at the beginning of this article, the prohibition on sex discrimination was a hastily added proviso to the House version of Title VII. In the Senate, the sex discrimination provision raised some concern. It was believed that the bill, if approved as it was with the last minute addition of the prohibition on sex discrimination, would undo many of the provisions of the Equal Pay Act (EPA) passed just one year before. Unlike the hastily added sex discrimination provision in Title VII, the Equal Pay Act had been debated for a long period of time and the result was a meticulously worded document reflecting the will of Congress. To prevent rendering the EPA a nullity, an amendment to Title VII was introduced by Senator Bennett.

The Bennett Amendment was meant to clarify the Title VII proscriptions on sex discrimination and expressly adopted and incorporated the four affirmative defenses of the EPA into the statute. It was maintained that, despite the incorporation of the Bennett Amendment, the sex discrimination provision of Title VII was not duplicative of the EPA since the coverage of the two statutes differed. Subsequently, Title VII, with the Bennett Amendment, was enacted.

One of the leading cases before the *Gunther* decision in the area of comparable work was *Christensen v. State of Iowa*.[26] It did not need to interpret the Bennett Amendment. Instead, it found that a prima facie violation of Title VII could not be inferred whenever employees of different sexes are compensated unequally for work which, albeit requiring different skills of equal value to the employee, does not command equal compensation in the labor market. The court held that such an assertion

> . . .ignores economic realities. . . We find nothing in the text and history of Title VII suggesting Congress intended to abrogate the laws of supply and demand or other economic principles that determine wage rates for various kinds of work. We do not interpret Title VII as requiring an employer to ignore the market in setting wage rates for genuinely different work classifications.[27]

Finding that the jobs in question, i.e., physical plant positions mainly held by men, commanded a higher wage scale in the community than clerical jobs exclusively held by females, the court nevertheless held that there was no Title VII violation. Since there was a specific finding that the higher paid physical plant positions were open equally to all qualified applicants be they male or female no Title VII violation was found.

In *Lemons v. City and County of Denver*,[28] the court was faced head-on with the comparable worth issue. Specifically, the plaintiffs' case was based on the premise that nurses were underpaid in city positions (and in the community as well) in comparison to other positions which they alleged were of equal worth to the employer. It was held that under existing authority, specifically Title VII and the Equal Protection Clause of the Fourteenth Amendment, the court could not mandate that the city reassess the worth of services of each position in relation to all others. Nor could it "total[ly] disregard. . .conditions in the community."[29] The court concluded that the relief sought far exceeded anything that had been contemplated by the Constitution or by the Congress and that applying the comparable worth doctrine "would be a whole new world for the court, and until some better signal from Congress is received we cannot venture into it."[30]

Oaks v. City of Fairhope[31] involved a former librarian who claimed, *inter alia*, her duties as director, while substantially similar to duties of various other city department heads such as the chief of police or street superintendent, were compensated at a lesser rate than the others. The court refused "to engage in wholesale reevaluation of any employer's pay structure in order to enforce [its] own conceptions of economic worth."[32] It ultimately refused to embrace the comparable worth approach advocated by the plaintiff.

---

[26] 563 F.2d 353 (8th Cir. 1977).
[27] *Id.* at 356.
[28] 620 F.2d 228 (10th Cir.), *cert denied*, 449 U.S. 888 (1980).
[29] *Id.* at 229.
[30] *Id.*
[31] 515 F. Supp. 1004 (S.D.Ala. 1981).

Notable for its seeming acceptance of the comparable worth doctrine is *Taylor v. Charley Bros. Co.*.[33] This case involved a grocery supplier who operated warehouses divided into departments—Department 1 was strictly male; Department 2 strictly female. There was no interchange of personnel between the two and a significant wage differential existed between the departments.

The case clearly involved blatant pattern and practice discrimination proscribed by Title VII in that the women could not apply for the positions in the all-male department, were kept on a temporary and part-time status, unlike their male counterparts, for prolonged periods of time; and where, in some cases, though the women held positions which were equal to male positions (in that they required substantially equal skill, effort and responsibility and were performed under substantially equal working conditions), they were not equally compensated. Based on this demonstration of overt discrimination, the court inferred it was the employer's intention to discriminate against women in setting their wages lower than men. The court then concluded that the employer intentionally discriminated against all other women (i.e., other than those holding positions substantially equal to men) by paying substantially less than the men in the other department received because they worked in a department solely populated by women and not because they performed work inherently worth less than that performed by men. Relying on a job evaluation conducted by an expert witness, the court adopted the finding that the women should have been earning 90% of the wage rate paid to men.

While *Taylor* is hailed by comparable worth proponents as embracing wholeheartedly the doctrine, it does not go nearly as far as is claimed. The court, before relying on the comparable worth doctrine, made several specific conclusions of law each holding that certain of the employer's actions demonstrated purposeful discrimination. There was an intentional violation of Title VII by the employer in refusing to consider women for positions/promotions in Department 1. The company purposely maintained the women on temporary and part-time status so as to deny them full-time wages and the opportunity to accrue seniority. The employer, moreover, denied the women equal pay for equal work in direct violation of both Title VII and the EPA.

Having found purposeful discrimination on the part of the employer against the class of women in general, the court had to grapple with the fashioning of a remedy. Clearly where the positions were equal, the women could easily be made whole. However, the majority of the women did not perform substantially equal work as compared to the males. Therefore, though they felt the effects of discrimination practiced against them, there was no remedy for them under the EPA. Moreover, in order to redress the discrimination under Title VII, some "value" other than that already ascribed to by the employer had to be assessed. Otherwise, despite a finding of overt, intentional discrimination no remedy was available to make whole those who had suffered.

---

[32] *Id.* at 1060 quoting *Brennan v. Prince William Hosp. Corp.*, 503 F.2d 282, 285 (4th Cir. 1974), *cert. denied*, 420 U.S. 972 (1975).

[33] 25 FEP Cases 602 (W.D.Pa. 1981).

Additionally, the women's applications reflected that they hadn't indicated a departmental preference—if given the opportunity they might not have selected to work in Department 1. Thus, the court was left with trying to compensate them for actual work performed. It is important to note that the court never accepts the classical comparable worth doctrine, which *inter alia* asserts that the marketplace discriminates against women because they perform "women's work". Rather, the court, having found that women were segregated into one department and purposefully paid lower wages than their male counterparts, adopts the comparable worth doctrine as a means of redressing the effects of the discrimination. Proof of intentional discrimination was required by the court before it turned to the comparable worth theory to determine the amount of the remedy. Hence, *Taylor* should be remembered for what it does not say—it does not say that just because women are in positions in job-segregated occupations and are paid lower wages then there is discrimination and comparable worth will be used to redress it. Rather, it stands for the proposition that where it can be demonstrated that the employer intentionally segregated women into certain positions and then deliberately paid them lower wages, a Title VII violation will be found and, lacking any other means to assess damages, comparable worth will be relied on to determine the amount for which the employer is liable.

Many advocates and opponents of the comparable worth theory looked to the Supreme Court to definitively decide the issue in *Gunther*. That case involved a claim by women guards that they were paid less than male guards of a prison. It was alleged that because of intentional sex discrimination the county set the pay scale for female guards at a lower level than warranted by its own survey of outside markets and the worth of the jobs.

The district court found that since the female guard positions were not substantially equal to those held by men, as a matter of law a sex-based wage discrimination claim could not be brought under Title VII since the equal work standard of the Equal Pay Act was not satisfied. The district court dismissed the claims and, on appeal, the Ninth Circuit reversed, holding that an allegation of sex discrimination was cognizable under Title VII even though the equal work standard of the EPA was not met. The Supreme Court granted certiorari to consider whether the Bennett Amendment incorporated into Title VII the equal work standard of the EPA.

It is significant to note that the *Gunther* decision, contrary to the popular belief fostered by comparable worth advocates, is *not* a comparable worth decision.[34] Instead, the Court emphasizes the narrowness of the question before it. It specifically notes that the claims at issue is not based on the "controversial concept of 'comparable worth'."[35] The Court found that the case alleged proof of intent to depress wages based on sex discrimination. It noted that the case was thus distinguishable from *Lemons* since in *Gunther* plaintiffs were not seeking higher compensation simply based on comparison of the intrinsic worth of different jobs.[36] In *Gunther*, unlike *Lemons*, there was a claim of direct evidence of intentional discrimination (as opposed to indirect theoretical proof of such discrimination based on a presumption under Blumrosen's theory).

To support their claim of direct proof, plaintiffs contended that the County of Washington had evaluated the worth of their jobs and determined that they should be paid 95% as much as male correction officers. However, it only compensated them at 70% of their full worth while compensating males at the full evaluated worth of their jobs. The failure to pay the women the full worth of their jobs was attributable to intentional sex discrimination and could be so proven. As the Court notes, this claim significantly differs from one asserted under the classic comparable worth doctrine: "Thus, respondent's suit does not require a court to make its own subjective assessment of the value of the male and female guard jobs, or to attempt by statistical technique or other method to quantify the effect of sex discrimination on the wage rates. (Footnote omitted)."[37]

What *Gunther* does hold is that claims of sex-based discrimination can be brought under Title VII even though no member of the opposite sex holds an equal but higher paying job and provided that the disparate wage is not based on seniority, merit, quantity and quality of production, or any other factor other than sex. As Justice Rehnquist indicated:

---

[34] As the court in *Oaks* noted:

> In oral argument before the Supreme Court in *Gunther*, counsel for plaintiffs/appellees denied that her clients advocated, or that the Court of Appeals embraced, the replacement of the equal pay concept under Title VII with a 'comparable worth' theory. Plaintiffs' counsel readily conceded that a Title VII plaintiff cannot establish a *prima facie* case of sex discrimination solely by alleging that the requirements of her job are comparable to those of another job occupied by a man. "Arguments Before The Court", 49 U.S.L.W. 3751 (April 14, 1981) *quoted in Oaks*, 515 F. Supp. at 1040 n.26.

Moreover, Justice Rehnquist in his dissent avers:

> The opinion does not endorse the so-called 'comparable worth' theory: though the Court does not indicate how a plaintiff might establish a prima facie case under Title VII the Court does suggest that allegations of unequal pay for unequal, but comparable, work will not state a claim on which relief may be granted. *Gunther*, 452 U.S. at 203.

[35] *Gunther*, 452 U.S. at 166.

[36] *Id.* at 166 n.7 & 203-04 (Rehnquist, W., dissenting).

[37] *Id.* at 181.

> . . . all we may conclude is that even absent a showing of equal work, there is a cause of action under Title VII where there is direct evidence that an employer has *intentionally* depressed a woman's salary because she is a woman. The decision today does not approve a cause of action based on a *comparison* of the wage rates of dissimilar positions.[38]

Yet, nevertheless, comparable worth advocates hail the *Gunther* decision as a landmark one since it does authorize the bringing of claims of wage discrimination not involving equal or substantially equal positions.

The post-*Gunther* decisions have accepted the limitations set by *Gunther*—i.e., the need to prove intent and the availability of the four EPA affirmative defenses. Unfortunately, the Court did not elucidate the standard for proving intent. In *Kouba v. Allstate Insurance Co,*[39] the court had occasion to deal with what was encompassed by the EPA affirmative defense of "factor other than sex." Defendant Allstate computed minimum salaries guaranteed to all new sales agents on the basis of ability, education, experience and prior salary. Female agents brought an action alleging that the use of prior salary, which perpetuated other employers' discriminatory decisions, led to a wage differential between female and male agents.

The district court ruled against the employer, finding that in order to use a factor such as prior salary, the employer must demonstrate it made a reasonable attempt to ensure that the factor was not a product of sex discrimination. The Ninth Circuit rejected this logic finding that "while Congress fashioned the Equal Pay Act to help cure longstanding societal ills, it also intended to exempt factors such as training and experience that may reflect opportunities denied to women in the past."[40]

While recognizing that the use of prior salary could be manipulated to undercompensate women, the Court refused to find that it did not fall legitimately within the "factor other than sex" exception. Rather, it remanded the case back to the district court to evaluate the business reasons asserted by the employer for its use of this factor. If a legitimate business reason was established then there would be no violation of Title VII.

Briggs represents an outright rejection by the court of the theory that an employer is liable for the employment practices of others or for existing, discriminatory market conditions. Public health nurses had alleged that the defendant city had discriminated against them on the basis of sex with respect to their job compensation. They were employed in a lower paying classification than male public health sanitarians, who, they alleged, had positions requiring the same or lesser qualifications, skills and effort. There was no allegation that the nurses had been denied access to these sanitarian positions nor was it alleged that the positions were substantially equal. Rather, the claim was a classical comparable worth one—the plaintiffs' work had been undervalued solely because of the sex of the persons performing it. The pay disparity (far less than the 20% differential cited by comparable worth advocates) which existed between males and females, it was alleged, could be traced to the traditional and long-accepted devaluation of the worth of jobs performed by women.

---

[38] *Id.* at 204.

[39] 691 F.2d 873 (9th Cir. 1982).

[40] *Id.* at 876 *citing* H.R. Rep. No. 309, 88th Cong., lst Sess. 3, *reprinted in* 1963 U.S. Code Cong. & Ad. News 687, 689.

The defendant had conducted a classification survey, albeit fifteen years prior to the litigation, and had adopted the recommendations of the survey. It did not subsequently conduct a new survey but did upgrade the sanitarians salaries based on the needs to compete in the marketplace. Plaintiffs contended that even if the defendant had based the increase on marketplace concerns such an explanation did not rebut the allegation of discrimination since the market reflects the biases and stereotypes of the value of women's work.

The court found such an argument unpersuasive and stated:

> The plain language of Title VII indicates the Congressional intent to influence and affect the conduct of employers. The statute's prohibitions are directed at the employer's employment practices; the statute's sanctions are directed at the employer who violates the prohibitions and engages in an unlawful employment practice. The statute's remedial purpose is not so broad as to make employers liable for employment practices of others or for existing market conditions. . .
>
> . . .Under Title VII, an employer's liability extends only to its own acts of discrimination. Nothing in the Act indicates that the employer's liability extends to conditions of the marketplace which it did not create. Nothing indicates that it is improper for an employer to pay the wage rates necessary to compete in the marketplace for qualified job applicants. That there are an abundance of applicants qualified for some jobs and a dearth of skilled applicants for other jobs is not a condition for which a particular employer bears responsibility.[41]

The most recent case dealing with comparable worth is *AFSCME v. State of Washington*.[42] The district court therein ordered the state to raise the wages of approximately 15,000 employees both male and female[43] in predominantly female job classifications and awarded back pay to the employees based on the state's violation of Title VII. In 1974, the state had ordered a study of its job classifications. The study found a wage disparity of 20% between male-dominated and predominantly female positions requiring comparable skill, effort, and responsibility. An update of the 1974 survey was completed in 1976 and a formula for computing comparable worth rates was developed and continued to be used by the state. The Governor subsequently included seven million dollars in the budget to begin implementation of comparable worth but his successor, Governor Dixie Lee Ray, removed it from the budget, notwithstanding the fact that a surplus existed that could have been used. However, the two civil service boards developed comparable worth pay schedules and submitted them to Governor Ray. Thus, at the outset of the case, the district court stated that the claim did not "require this Court to make its own subjective assessment as to 'comparable worth' as to the jobs at issue in this case."[44]

---

[41] *Briggs*, 536 F. Supp. at 445 & 447.

[42] 578 F. Supp. 846 (W.D.Wash. 1983).

[43] Plaintiffs included all male and female employees of all job descriptions under the jurisdiction of the two civil service boards which were 70% or more female as of November 20, 1980 and thereafter. *Id.* at 851.

The court found that the state, based on its own job evaluation studies, did not pay predominantly female jobs their full evaluated worth. This, coupled with, *inter alia*, a finding that there had been admissions by present and former state officials that wages paid to employees in predominantly female jobs were discriminatory, provided the basis for the court's finding purposeful intent on the part of the defendant. The court also relied heavily on its finding that there had been historical discrimination[45] against women in employment in the State of Washington and such discrimination has been and continues to be manifested by direct and institutionalized discrimination.[46]

The district court, while noting that the case involved implementation of a comparable worth compensation system, stated that it was more accurately described as a simple "failure to pay" case very similar to *Gunther*. The court emphasized that the state had acknowledged the disparity in pay between predominantly male and predominantly female classifications. Because of its historic discriminatory practices in employment on the basis of sex, the court concluded that the current procedures for compensation could not be based on any factor other than sex. Clearly this is not a classical comparable worth case since it adheres to the *Gunther* requirement of intent and specifically addresses the affirmative defense of "factor other than sex" under the EPA. However, it goes much farther than any previous case by appearing to hold the state liable for the historic discriminatory attitudes of a male-dominated society, notwithstanding significant case law to the contrary.

---

[44] *Id.* at 862.

[45] Indeed, in footnote, the court traces this so-called discrimination back to 1888. Moreover, it goes on to note in general the centuries old discriminatory attitudes and practices of a male-dominated society, citing as an example of such rampant sex discrimination the Declaration of Independence where is conspicuously absent any mention of the female gender. 578 F. Supp. at 866 n. 11.

[46] Reliance of the court on historical discrmination and a specific conclusion of law thereon would appear misplaced. Such reliance was specifically discredited in *United Air Lines v. Evans*, 431 U.S. 553 (1977) wherein the Supreme Court held:

> A discriminatory act which is not made the basis for a timely charge is the legal equivalent of discriminatory act which occurred before the statute was passed. It may constitute relevant background evidence in a proceeding in which the status of a current practice is at issue, but separately considered, it is merely an unfortunate event in history which has no present legal consequences. *Id.* at 558.

Thus, the case law to date in this area has been very limited in its acceptance of the comparable worth theory under a Title VII cause of action. Before adopting such an approach, the courts have uniformly required a showing of discriminatory intent and have allowed the affirmative defenses of the EPA to be relied on by the employer, to include consideration of the marketplace.[47] The classical comparable worth doctrine, which presumes a prima facie case wherever occupants of a job classification are 70% or more female because of the alleged discriminatory attitudes perpetuated by society and reflected in the marketplace, has not been accepted. Thus, the Blumrosen theory of comparable worth does not appear presently to be cognizable.

Moreover, general Title VII precedent would appear to support the proposition that the classical comparable worth theory is not actionable. Litigation in Title VII matters has established that the legislation generally seeks to redress discrimination as practiced against the individual by a single employer and not by society at large or the labor market in general against the group or class.

The Supreme Court emphasized in *City of Los Angeles v. Manhart*[48] that the focus of any Title VII inquiry is on the individual not the class. The reason for this is that, "Practices that classify employees in terms of religion, race, or sex tend to preserve traditional assumptions about groups rather than thoughtful scrutiny of individuals."[49] *Manhart* involved a Title VII challenge by female employees of the Los Angeles Department of Water against the requirement that they make larger pension contributions than male employees. The city maintained that its action was defensible based on the overall result—i.e., women live longer than men as a class and therefore in the long run receive equal or greater benefits than men.

The Supreme Court, while acknowledging that the city treated the women employees different from the male employees because they were, in fact, different, nevertheless found discrimination. This was due to the fact that all individuals in the female class did not share the same characteristic that differentiates the average class representative—not all lived longer than men. The Court refused to determine the existence of discrimination by comparison of class characteristics; rather a determiniation must be based on individual characteristics. The Court forcefully asserted:

---

[47] *See Horner; Briggs.* (*supra*)

[48] 435 U.S. 702 (1978). The Supreme Court had occasion to approvingly cite its *Manhart* holding in *Arizona Governing Committee v. Norris*, 103 S.Ct. 3492, 3493 (1983): "This underlying assumption that sex may be used to predict longevity is flatly inconsistent with the basic teachings of *Manhart*: that Title VII requires employers to treat their employees as *individuals*, not 'as simply components of a racial, religious, sexual or national class.' 435 U.S. at 708."

[49] *Id.* at 709.

> The statute makes it unlawful 'to discriminate against any *individual* with respect to his compensation, terms, conditions, or privileges of employment, because of such *individual's* race, color, religion, sex or national origin' . . . The statute's focus on the individual is unambiguous. It precludes treatment of individuals as simply components of a racial, religious, sexual or national class. If height is required for a job, a tall women may not be refused employment merely because, on the average, women are too short.[50]

Moreover, the Court adamantly maintained that the statute is addressed solely to the employment conditions set by the employer and not non-employment market conditions:

> Nothing in our holding implies that it would be unlawful for an employer to set aside equal retirement contributions for each employee and let each retiree purchase the largest benefit which his or her accumulated contributions could command in the open market . . . Title VII and the Equal Pay Act primarily govern relations between employees and their employer, not between employees and third parties.[51]

Similarly, the so-called "bottom line" theory of defense against a Title VII violation was addressed by the Supreme Court in *Connecticut v. Teal*.[52] Under that theory, adverse impact of a component of the selection process, e.g., an examination used to screen out some candidates, would not render the employer liable for discrimination suffered if the bottom line result of the entire promotional process showed an appropriate racial balance.

The selection process for supervisors in *Teal* required as a first step a passing score on a written exam. Fifty-four percent of all blacks passed while sixty-eight percent of whites passed. It was an absolute condition for promotion which excluded blacks in disproportionate numbers and it was not proven to be job-related. However, in choosing persons from the list thus generated, the defendants considered past work performance, recommendations of individual supervisors, seniority, and the goals of the affirmative action program so that a larger percentage of blacks were selected off the list, thus ensuring that overall there was no adverse impact on blacks. The Courts firmly rejected the group or class concept inherent in the bottom line approach. It stated: "The suggestion that disparate impact should be measured only at the bottom line ignores the fact that Title VII guarantees these individual respondents the *opportunity* to compete equally with white workers on the basis of job-related criteria."[53] The Court reemphasized that the focus of Title VII was the protection of the individual and not equal results for a class or group as a whole.[54]

---

[50] *Id*. at 708.
[51] *Id*. at 717-18 & n.33.
[52] 457 U.S. 440 (1982).
[53] *Id*. at 451.

In summary, while the term "comparable worth" has been invoked by some recent court cases, it is clear that the classical theory of comparable worth as articulated by Blumrosen is not legally supportable.[55] The present case law requires a proving of intentional discrimination in order for a claim to be congizable under Title VII. Under the classical theory of comparable worth no intent need by proven—it is implied from the fact that the individual occupies a position in a job category that is allegedly sex-segregated. Yet the teachings of *Gunther* are clear—absent direct evidence of intent an action on sex-based wage discrimination has no legal underpinnings. Even in *AFSCME*, the most far-reaching case so far, the federal district court judge found direct evidence of discrimination and then went on to infer intent for those women holding unequal positions.

The very recent decision of the Ninth circuit in *Spaulding v. Bush and University of Washington*, should be clearly noted. The court where *Gunther* arose has decided that where the "sex discrimination claim is a wide-ranging claim of wage discrimination between only comparable jobs, the law does not go so far as to allow a prima facie case to be constructed by showing disparate impact."[56] As *Spaulding*, *Manhart*, and *Briggs* make clear, an employer should not be held accountable for alleged discrimination in the marketplace. Present law strikes the correct balance by addressing discrimination in the context of the employer-employee relationship—it does not address the alleged "historical discrimination" by society nor "the mere payment of market wages."[57]

IV. ENACTMENT OF THE COMPARABLE WORTH DOCTRINE

It is evident from the foregoing analysis that legislation is required in order for the comparable worth doctrine to be enforced in the courts. Congress could, if it so chose, expand the scope of the EPA or Title VII to encompass the comparable worth theory. As has been demonstrated, the intrinsic worth of a job is a subjective judgment. Any legislation mandating comparable worth would have to address how such worth would be determined. There are two basic though unacceptable alternatives—use of job evaluation systems or the courts. Unfortunately, no one job evaluation system is satisfactory for all jobs. Moreover, they rely on the subjective, albeit trained, judgment of the evaluator. Congress would be required to set up multiple job evaluation systems for every industry in every city, town and village and ensure they were administered by trained evaluators in order to effectively determine comparable worth on a nation-wide basis.

---

[54] *Id.* at 453-54.

[55] The classical theory provides for a presumption of discrimination where any job occupation is 70% or more female, based on the alleged historic devaluation of "women's work". It would not allow for marketplace consideration to be taken into account in determining the value of the position. Rather, based on a job evaluation, the supposed comparable worth of the job would be estimated and wages raised in accordance with the value thus estimated.

[56] No. 82-3038 (July 3, 1984).

[57] *See Firefighters Local Union No. 1784 v. Scotts*, 52 U.S.L.W. 4767 (June 12, 1984) and *Spaulding v. Bush and University of Washington*, (with slip opin. at 38).

The other option available is to rely on the federal judiciary, untrained in job evaluation, to evaluate the worth of various jobs to the employer. At a minimum this would lead to markedly increased judicial activism, a result which is far from desirable.[58] It would also serve to inject more, not less, subjectively into the process, as there is no guarantee that any two judges would assess the same value to a particular job. This would, in turn, lead to forum-shopping by the litigants. In the case law to date, the courts have resoundingly rejected such a role. The courts have shown an admirable reluctance to make their own subjective assessment of a job's worth. This is in accord with the traditional reticence of both the courts and the Congress to transgress into the area of business affairs.

The Government has historically been committed to the fostering of a free enterprise system and has sought to avoid regulation, wherever possible, of the economy. It has wisely adopted the approach of laissez-faire to the workings of the marketplace. What comparable worth advocates would do is have the Government intervene and direct the running of the marketplace. The notion that the laws of supply and demand dictate the value of the position would be discarded if the classical comparable worth doctrine was adopted. This would be necessary since the marketplace is "tainted" by the biases and prejudices of society against "women's work." Rather, some third party, whether the job evaluator or the courts, would dictate to the marketplace what the value of a job would be. Free enterprise, as society knows it today, would cease to exist—rather, a regulated, fixed-labor marketplace would be superimposed on the nation.

The legislation of comparable worth would go far beyond what Congress has been willing to mandate in the area of labor law. Congress left the substance of collective bargaining, including wages, to the parties and refused to involve or permit the Government through the National Labor Relations Board ("NLRB") or the courts to make such a determination. The Supreme Court, in *H.K. Porter Co. v. NLRB*,[59] rebuked the NLRB for exceeding its powers in ordering the incorporation of a union proposal in the parties' contract. The court asserted:

---

[58] For a cogent discussion of the case against judicial activism, *see* M. Wilkey, *Activism by the Branch of Last Resort: Of the Seizure of Abandoned Swords and Purses* (National Legal Center for the Public Interest, 1984).

[59] 397 U.S. 99 (1970).

> The Board's remedial powers under § 10 of the Act are broad, but they are limited to carrying out the policies of the Act itself. One of these fundamental policies is freedom of contract. While the parties' freedom of contract is not absolute under the Act, allowing the Board to compel agreement when the parties themselves are unable to agree would violate the fundamental premise on which the Act is based—private bargaining under governmental supervision of the procedure alone, without any official compulsion over the actual terms of the contract.[60]

The purpose of the National Labor Relations Act was to avoid industrial strife if possible. In enacting this remedial legislation, however, Congress specifically weighed the costs of an imposed settlement against the possibility of a strike or lock-out and chose the latter rather than dictate to the employer and employees that wages—high or low—should be paid.

Even in enacting Title VII legislation, the Congress insisted on certain limitations to the intrusion of the Government into private enterprise. In *United Steelworkers v. Weber*,[61] the Supreme Court recognized the parameters set on Government intervention:

> Title VII could not have been enacted into law without substantial support from legislators in both Houses who traditionally resisted federal regulation of private business. Those legislators demanded as a price for their support that 'management prerogative, and union freedoms...be left undisturbed to the greatest extent possible.'[62]

The courts have followed the lead set by Congress in refusing to dictate to the private sector how to run its business. The business judgment rule often is invoked by the courts. This doctrine allows corporate management to make decisions on how a business is run and, if made in good faith, the court will refuse to second guess or substitute its own judgment for management's. Explicit refusal to second guess management in the area of business practices was articulated in *Furnco Construction Corp. v. Waters*.[63] There, the Supreme Court acknowledged that: "Courts are generally less competent than employers to restructure business practices, and unless mandated to do so by Congress they should not attempt it."[64] Or as the Ninth Circuit stated on July 3, 1984 in *Spaulding*, "Courts are not competent to engage in a sweeping revision of market wage rates."

Moreover, if the courts were required to determine comparable worth, the already overburdened judiciary would sink in the morass of litigation that would occur. The already clogged system would come to a virtual halt as the courts undertook the tedious task of making a subjective assessment of the comparable worth of positions. Appeal courts would be swamped with cases requesting that a second subjective assessment be made. Clearly, the judicial system as it now exists could not withstand the strain.

---

[60] *Id.* at 108.

[61] 443 U.S. 193 (1979).

[62] *Id.* at 207.

[63] 438 U.S. 567 (1978).

[64] 438 U.S. at 578.

The cost to the nation of enacting the comparable worth standard as law would be prohibitive. The State of Washington estimated that the cost of complying with the *AFSMCE* decision could exceed one billion dollars. The cost nation-wide cannot even begin to be comprehended. Moreover, the ability of U.S. private enterprises to compete with the nations of the world would surely be impacted.

Yet the most serious cost to the nation would not be economical, but social. The rights of the individual, sacrosanct to our society, would be subordinated to those of the group. What this ultimately would result in is perpetuation of stereotyping by group rather than a recognition of the uniqueness of the individual. How ironic when one considers that stereotyping is the very thing that comparable worth advocates condemn most vociferously.

Moreover, in the final analysis, the adoption of the comparable worth doctrine would bring society back full circle to the deleterious doctrine disavowed by it thirty years ago—i.e., the theory of separate but equal. Job segregation would be ensured, for women could select and choose only those jobs which were desirable, and be assured that they would receive pay equal to that accorded jobs of supposed comparable worth but which are far less desirable and predominantly held by men. Thus it is clear that Congress must make a fundamental choice in dealing with the comparable worth issue. It can seek to ensure the continuation of full job integration and equal consideration of individuals based on their qualifications—the goal it set some twenty years ago when it enacted the EPA and Title VII. Or it can repudiate its action, along with the decisions of the Supreme Court in this area, and return the nation to a system of separate but equal—a system repugnant to the ideals of American society.

The comparable worth doctrine, in the name of pay equity, would impose on the nation a mandated system of wage rates and would stifle the notion of free enterprise. Clearly in adopting such a doctrine, Congress would be repudiating the concept of free choice. As one commentator has succinctly stated:

> A society that puts equality, in the sense of equality of outcome, ahead of freedom, will end up with neither equality nor freedom. The use of force to achieve equality will destroy freedom, and the force introduced for good purposes will end up in the hands of people who use it to promote their own interests.[65]

---

[65] D. Smith, "A Legislator's View of Comparable Worth" in *Equal Pay for UNequal Work* 203, 208 (P. Schlafly ed. 1984) *quoting* M. Friedman.

AN ECONOMIC PERSPECTIVE

AN ARGUMENT AGAINST COMPARABLE WORTH

by
JUNE A. O'NEILL, PH.D.
Director of the Program of Policy
Research on Women & Families
The Urban Institute

The women's movement has traditionally fought for equal opportunity for women—the opportunity for women to gain access to the schools, training, and jobs they choose to enter, on the same basis as men. In working towards this goal, feminists have accepted the fundamental operations of the market economy. In fact, removing discriminatory barriers that restrict the free supply of workers to jobs can be viewed as a way of improving the way the market functions. In contrast, the recent policy of "comparable worth" rejects the market system. In place of the goal of equality of opportunity, it substitutes a demand for equality of results, with legislation and regulation as the means to its end.

Comparable Worth vs. The Free Market

Comparable worth is not a new idea—since the time of St. Thomas Aquinas the concept of the "just price," or payment for value, has had considerable appeal. Practical considerations, however, have won out over metaphysics. In a free market, wages and prices are not taken as independent judgments of the inherent value of the job or the good itself, but reflect a balancing of people's desire for these services and goods (demand), with the relative scarcity of them (supply). Market prices are the efficient signals that reflect supply and demand. Thus, we accept and pay a higher price for diamonds than for water, even though water is vital to our survival and diamonds most assuredly are not. If asked what the proper scale of prices should be for such products, most people—at least those superficially familiar with economics—would sensibly answer that there is no proper scale. It all depends on the tastes and needs of millions of consumers and the various conditions that determine costs of production and the supplies of the products.

What is true of the product market is equally true of the labor market. For example, among predominantly male occupations, lawyers and engineers receive higher wages than clergymen and bricklayers. Yet the latter are equally worthy in the sense that they are at least as important in our lives. There is simply no independent, scientific way to determine wage rates in these or any other particular occupations without recourse to the market. Job skills have "costs of production" such as formal schooling and on-the-job training. Different jobs also have different amenities that may be more or less costly for the employer to provide, such as part-time work, safe work, flexible hours, or pleasant surroundings. Individuals vary in their talents and tastes for acquiring skills and performing particular tasks. Different skills are needed at different times as the demand for products change and as new production techniques develop, and these changes may vary by geographic region. In a market system, all these factors are reflected in changing wage rates, providing workers with the incentive to acquire new skills to enter different industries or migrate to different regions.

The wage pattern that is the net outcome of these forces rarely does and need not conform with anyone's independent judgement based on preconceived notions of comparability or relative desirability. The clergy, for example, earn about 30 percent less than brickmasons. Yet the clergy are largely college graduates; the brickmasons are not. Both occupations are more than 95 percent male—so one cannot point to sex discrimination as an explanation for the disparity. The cause of the wage disparity may lie in the unusual union power of construction workers, and as such would be an example of market imperfections. But other explanations are possible too. The real compensation to the clergy, for example, may include housing and spiritual satisfaction as fringe benefits. On the other hand, the high risk of unemployment and exposure to hazards of brickmasons may be reflected in additional monetary payments. If enough people require premiums to become brickmasons and are willing to settle for nonmonetary rewards to work as clergy, and if the buyers of homes are willing to pay higher costs of brickmasons, while churchgoers are satisfied with the number and quality of clergy who apply, the market solution may well be satisfactory.

One can also think of examples of jobs which initially might seem comparable but which would not command the same wage, even in nondiscriminatory competitive markets. The following example, based on a case that has been used before, illustrates the point so well it bears repeating. Consider two jobs—one a Spanish-English translator and the other a French-English translator. Most job evaluators would probably conclude that these jobs are highly comparable and should be equally compensated. The skills required, the mental demands, the working conditions and responsibility seem nearly identical. But "nearly identical" is not equal. The difference in language may in fact give rise to a legitimate pay differential. Various factors come into play. For example, if trade with Spanish-speaking countries is greater than with French-speaking nations, there may be more demand for Spanish-English translators than French-English ones. But suppose a greater supply of Spanish-English than French-English translators. And further suppose geographic variations in both supply and demand. To predict which bilingual translator would command the higher wage and by how much, would be complicated and difficult at best.

The market determines wages by processing the scarcity of talents, the talents of heterogeneous individuals, and the demands of business and consumers. The market's net outcome would only coincidentally match a comparable worth determination. Too many factors interact in highly complex ways for a study to find the market clearing wage.

The Pay Gap

In 1983, the pay gap, viewed as the ratio of women's to men's hourly pay, was about 72 percent overall.[11] Among younger groups the ratio is higher (the pay gap smaller)—a ratio of 89 percent for 20–24 year olds and 80 percent for the age 25–34 years old. Among groups age 35 and over the ratio is about 65 percent.[12]

What accounts for the pay gap? Clearly not all differentials reflect discrimination. Several minorities (Japanese and Jewish Americans for example) have higher than average wages. I do not believe anyone would ascribe these differentials to favoritism towards these groups and discrimination against others.

A growing body of research has attempted to account for the pay gap and has come to different conclusions. These studies, however, use different data sources, refer to different populations and control for many, but not always the same, set of variables. Even the gross wage gap—the hourly earnings differential before adjusting for diverse characteristics—varies from study to study, ranging from 45 to 7 percent depending on the type of population considered. Studies based upon national samples covering the full age range tend to show a gross wage gap of 35 to 40 percent. Studies based on more homogeneous groups, such as holders of advanced degrees or those in specific professions, have found considerably smaller gross wage gaps.

After adjusting for various characteristics, the wage gap narrows. Generally, the most important variables contributing to the adjustment are those that measure the total number of years of work experience, the years of tenure on the current job, and the pattern or continuity of previous work experience.

Traditional home responsibilities of married women have been an obstacle to their full commitment to a career. Although women are now combining work and marriage to a much greater extent than in the past, older women in the labor force today have typically spent many years out of the paid labor force raising their families. Data from the National Longitudinal

---

[11] The commonly cited gap—where women are said to earn 59 cents out of every dollar earned by men—is based on a comparison of the annual earnings of women and men who work year-round and are primarily full-time. In 1983 this ratio was 64 percent. This figure is lower than the figure of 72 percent cited above because the annual earnings measure is not adjusted for differences in hours worked during the year, and men are more likely than women to work overtime or on second jobs.

[12] Rytina, Nancy F. (1982). "Earnings of Men and Women: A Look at Specific Occupations," *Monthly Labor Review*, April 1982.

Survey (NLS) indicate that in 1977 employed white women in their 40s had worked only 61 percent of the years after leaving school, and employed black women had worked 68 percent of the years.[3] By contrast, men are usually in the labor force or the military on a continuing basis after leaving school.

In a recent study I examined the contribution of lifetime work experience and other variables using the NLS data for men and women aged 25 to 34. White women's hourly wage rate was found to be 66 percent of white men's—a wage gap of 34 percent. This wage gap narrowed to 12 percent after accounting for the effects of male-female differences in work experience, job tenure, and schooling, as well as differences in plant size and certain job characteristics. The latter included the years of training required to learn a skill, whether the occupation was hazardous, and whether the occupation had a high concentration of women.

The gross wage gap between black men and black women was 18 percent. The gross wage gap was smaller for blacks than for whites because job-related characteristics of black women and black men are closer than those of white women and men. Black women have somewhat fewer years of work experience in their teens and early 20s than white women, which may be related to earlier childbearing. They are more likely to work continuously and full-time later on, however, and thus accumulate more total work experience and longer tenure on their current jobs than white women. The adjustment for differences in the measured characteristics cited above narrowed the wage gap of black men and women to 9 percent.

Are the remaining, unaccounted-for differences a measure of discrimination in the labor market?

Unless all the productivity differences between women and men are accurately identified and measured, attributing labor market discrimination to the unexplained residual could easily be a misattribution. The unavailability of relevant data has forced the omission of many variables from my analysis and other studies. These variables include details on the quality and vocational orientation of education, on the extent of other work-related investments, such as job search, and on less tangible factors, for example, personal attributes such as motivation and effort. Differences in these factors may arise from the priority placed on earning an income versus fulfilling home responsibilities. If women, by tradition, assume the primary responsibility for homemaking and raising children, they may be reluctant to take jobs that demand an intense work commitment.

Alternatively, the unexplained residual may underestimate discrimination if some of the included variables, such as years of training to learn a job or the sex-typicality of occupations, partially reflect labor market discrimination. Some employers may deny women entry into lengthy training programs or be reluctant to hire them in traditionally male jobs. It is difficult with available data to distinguish this situation from one where women choose not to engage in training because of uncertainty about their long-term career plans or choose "female occupations" because they are more compatible with competing responsibilities at home.

---

[3] O'Neill, June (1984). "The Trend in the Male-Female Wage Gap in the United States," forthcoming *Journal of Labor Economics*, Oct. 1984.

Occupational Segregation

Although occupational segregation clearly exists, in large part it results from many of the same factors that determine earnings: years of schooling, on-the-job training and other human capital investments, as well as tastes for particular job characteristics. In a recently completed study, I found that women's early expectations about their future life's work—whether they planned to be a homemaker or planned to work outside the home—closely relate to the occupations they ultimately pursue.[4] Many women who initially planned to be homemakers in fact became labor force participants, but they were much more likely to pursue stereotyped female occupations than women who had formed their plans to work at younger ages. Early orientation influences early training and schooling decisions, and as a result women may be locked into or out of certain careers. Some women, however, by choice maintain an ongoing dual career, combining work in the home with an outside job. This leads to an accommodation in terms of the number of hours these women work and other conditions which influence their occupational choice.

Women and men were also found to differ sharply in the environmental characteristics of their occupations. Women were less likely to be in jobs with a high incidence of outdoor work, noisy or hazardous work, or jobs requiring heavy lifting. These differences may reflect employer prejudice or the hostile attitudes of male co-workers but they may also reflect cultural and physical differences.

In sum, a substantial amount of the differences in wages and occupations by sex has been statistically linked to investments in work skills acquired in school or on the job. Varied interpretations, even manipulations, of these statistical results are possible, however. Thus, whether the existing wage differentials result from choices made by women and their families, rather than from discrimination by employers, cannot really be known.

The Trend in the Pay Gap

A major source of frustration to feminists and a puzzle to researchers has been the failure of the pay gap to narrow over the post-World War II period despite large increases in women's labor force participation. In fact, the gap in 1982 is somewhat larger than it was in 1955.

---

[4] O'Neill, June (1983). "The Determinants and Wage Effects of Occupational Segregation," Working Paper, The Urban Institute.

The wage gap would not, however, narrow significantly over time unless the productivity or skill of women in the labor force increased relative to men's or discrimination in the work place diminished. Since the gross wage gap widened somewhat after 1955, either discrimination increased or women's skills decreased relative to men's. Findings from a recent study suggest that changes in skill, as measured by the changes in the education and work experience of men and women in the labor force, strongly contributed to an increase in the wage gap.[5]

In 1952 women in the labor force had completed 1.6 more years of schooling than men. This difference narrowed sharply so that by 1979 it had disappeared. A few facts help to explain this: the education level of men advanced more rapidly than that of women in the 1950s—aided by the GI bill on educational benefits, more men attended college; and the labor force participation of less educated women increased more rapidly than the participation of highly educated women. Thus, in terms of the overall level of educational attainment, the female labor force became increasingly less selective over time.

The rise in the number of women in the labor force may also have an effect on the lifetime work experience of the average working woman. A large number of less experienced women entering the labor force may have diluted the experience level of the working women. While the total number of years of work experience of women is not available for periods of time before the late 1960s, data on job tenure—years with current employer—show that in 1951 men's job tenure exceeded women's job tenure by 1.7 years. This difference widened to 2.7 years in 1962 and then slowly declined, reaching 1.9 years in 1978 and 1.5 years in 1981.

The decline in working women's educational level relative to men's alone would have caused the pay gap to widen 7 percentage points. The initial widening in the job tenure differential contributed another 2 percentage points to the gap. Together the change in education and job tenure would have increased the wage gap by more than it actually increased. Possibly then, discrimination declined during this period even though the wage gap widened. Since the mid-1960s education and work experience differences have moved in different directions. Male educational attainment rose slightly more than that of working women, and difference in work experience declined overall. Recently (between 1979 and 1983) the wage gap has narrowed as the ratio of women's wage rates to men's increased from 68 percent to 72 percent overall.

Evidence from NLS and other sources suggests that the pay gap is likely to continue to narrow in the next decade. Not only are young women working more continuously, but they are also getting higher pay for each year of work experience then they were in the late 1960s. This could reflect a reduction in sex discrimination by employers or a greater willingness of women to invest in market skills, or both. Women's career expectations also seem to be rising. In response to an NLS question asked in 1973, 57 percent of women between 25 and 29 indicated their intention to hold jobs rather than be homemakers when they reach age 35. Among women reaching ages 25 to 29 in 1978, 77 percent expressed their intentions to work.

---

[5] O'Neill, June (1984). "The Trend in the Male-Female Wage Gap in the United States," forthcoming *Journal of Labor Economics*, Oct. 1984.

Young women have also greatly increased their education level relative to men. Female college enrollment increased significantly during the 1970s, while male enrollment fell between 1975 and 1980. Moreover, women have made impressive gains in professional degrees during the 1970s. Work roles and work expectations of women and men may well be merging. As these younger women become a larger component of the female labor force, it is anticipated that the overall wage gap will be reduced.

Are Women's Occupations Underpaid?

Comparable worth supporters contend wages in "women's occupations" are lower because employers systematically downgrade them. The argument differs from the idea that pay in women's occupations is depressed because of an oversupply to these occupations. An oversupply could arise either because large numbers of women entering the labor force choose these occupations (which is compatible with no market discrimination) or because women are barred from some, causing an oversupply of others (a discriminatory situation). Although comparable worth advocates have taken the view that overcrowding is caused by restrictive barriers, they have lately come to believe that this explanation is not the whole cause of "low payment" in jobs.[6] They argue that employers can pay less to women's jobs regardless of supply considerations, simply reflecting prejudice against such jobs because they are held by women.

An employer's ability to wield such power is highly questionable. If a firm underpaid workers in women's occupations, in the sense that their wages were held below their real contributions to the firm's receipts, other firms would have a strong incentive to hire workers in these occupations away, bidding up the wages in these occupations. Thus, competition curtails employer power. Only collusion could thwart the competitive process, an unrealistic prospect considering the hundreds of thousands of firms in the market.

Killingsworth[7] has suggested that the market for nurses illustrates collusion, in this case by a cartelized hospital industry which has conspired to hold wages down. Basic facts about wages and supply in nursing, however, suggest that collusion either does not exist or is ineffective. Despite a perennial "shortage" of nurses that seems to have always existed, the number of nurses has increased dramatically, both absolutely and as a percentage of the population. In 1960 there were 282 registered nurses per 100,000 population. In 1980 there were 506 nurses per 100,000. This rate of increase is even more rapid than the increase in doctors over the past two decades and the supply of doctors has rapidly increased compared to overall labor force growth. Why did the increase occur? Were women forced into nursing because they were barred from other occupations? A few factors disprove this hypothesis. Nursing, along with other medical professions, has experienced a large increase in demand since the middle 1960s when Medicare and Medicaid were introduced and private health insurance increased. As a result, nurses' wages increased more rapidly than wages in other fields. Between 1960 and 1978 the salary of registered nurses increased by 250 percent while the pay of all men rose by 206 percent and that of all women rose by 193 percent. During the 1970s the rate of pay increase for nurses slowed, a predictable market response to the increase in supply. Entry of women into nursing school has recently slowed as well, also suggesting that a self-correcting mechanism is at work.

---

[6] Hartmann, Heidi I. (1984). "The Case for Comparable Worth," in Phyllis Schlafly ed., *Equal Pay for Unequal Work, A Conference on Comparable Worth.*

[7] Killingsworth, Mark (1984). *Statement on Comparable Worth*, testimony before the Joint Economic Committee, U.S. Congress, April 10, 1984.

Statistical analysis of the determinants of earnings in occupations provides another method to attempt to evaluate the contention that lower pay in female-dominated occupations reflects discrimination. A recent study of mine addressed the question of whether the predominantly female occupations still earn less than the predominantly male.[8] Accounting for measurable difference in skill, I did an analysis of data on over 300 occupations. After adjusting for schooling, training, part-time work, and environmental conditions (actual years of job experience and job tenure data were not available), I found that the proportion of females in an occupation was associated with lower pay in that occupation for both women and men. But the effect was quite small: for each 10 percentage point increase in the percent female in occupation, the wage in the occupation decreased by only 1.5 percent. Again, however, a question mark remains. Are there other characteristics of occupations which women, on average, may value more highly than men because of differences in tastes or home responsibilities? Are women, more so than men, willing to accept a lower wage in exchange for certain benefits? Examples that come to mind include the long summer vacation that teaching provides, or the steady 9 to 5 job close to home that certain offices or shops can offer. The true effect of sex on occupational wage rates is, therefore, another unresolved issue. There are many good reasons why women would choose particular lower-paying occupations with no imputation of sex discrimination on the part of employers. This does not rule out the possibility of discrimination, but it weakens the case for seeking an alternative to the market determination of occupational wage rates.

---

[8] O'Neill, June (forthcoming, 1984). "Earnings Differentials: Empirical Evidence and Causes," in G. Schmid ed. *Discrimination and Equalization in the Labor Market: Employment Policies for Women in Selected Countries.*

Comparable Worth in Practice—The Washington State Example

What would happen if wages were set in accordance with comparable worth standards and independently of market forces? Any large scale implementation of comparable worth would necessarily be based on job evaluations that assign points for various factors believed common to disparate jobs. For example, in the State of Washington, where a comparable worth study was commissioned, a job evaluation firm assisted a committee of thirteen politically chosen individuals in rating the jobs used as benchmarks in setting pay in State employment. The committee's task was to assign points on the basis of knowledge and skills, mental demands, accountability, and working conditions. The 1976 evaluation assigned a registered nurse at level IV the highest number of points of any job: 573—280 points for knowledge and skills, 122 for mental demands, 160 for accountability, and 11 for working conditions. A computer systems analyst at the IV level received a total of only 426 points—212 points for knowledge and skills, 92 points for mental demands, 122 points for accountability and no points for working conditions. In the market, however, computer systems analysts rank among the highest paid workers. National data for 1981 show they earn 56 percent more than registered nurses. The Washington job evaluation differs radically from the market in its assessment of the value of occupations throughout the job schedule. A clerical supervisor is rated equal to a chemist in knowledge and skills and mental demands, but higher than the chemist in accountability, thereby receiving more total points. Yet the market rewards chemist 41 percent higher pay. The evaluation assigns an electrician the same points for knowledge and skills and mental demands as a level I secretary and 5 points less accountability. Auto mechanics are assigned lower points than the lowest level homemaker or practical nurse for accountability as well as for working conditions. According to the evaluation, truck drivers rank at the bottom of the job schedule, assigned less points on knowledge and skills, mental demands and accountability than the lowest ranked telephone operator or retail clerk. The market, however, pays truck drivers 30 percent more than telephone operators and the differential is even wider for retail clerks.

Should the market pay according to the comparable worth scale? In Washington State, AFSCME, the American Federation of State, County, and Municipal Employees, brought suit against the State on the grounds that failure to pay women according to the comparable worth scale constituted discrimination. Judge Jack E. Tanner agreed and ruled in favor of the union. He based his decision largely on the fact that the state had conducted the study. The question of whether or not the study established a reasonable standard for non-discriminatory wage patterns never arose as an issue. In fact, the court disallowed the State from presenting a witness who would have critically evaluated the study.

What would happen if comparable worth were adopted as a pay-setting mechanism? Registered nurses and computer systems analysts provide an example. 95 percent of nurses are female; 25 percent of systems analysts are female. If a private firm employing both occupations were required to adopt the rankings from the Washington State comparable worth study it would probably have to make significant pay adjustment. It could either lower the salary of systems analysts below that of nurses or raise the pay of nurses above systems analysts. If it lowered the pay of systems analysts it would find it impossible to retain or recruit them. The more popular remedy would be to raise the pay of nurses. If the firm did so it would have to raise its prices to compensate for the cost of the higher salaries. Most likely, demand for the firm's product would fall, and the firm would of necessity be required to cut back production. It would seek ways of lowering costs—for example, by reducing the number of registered nurses it employed, trying to substitute less skilled practical nurses and orderlies where possible. Some women would benefit—those who keep their jobs at the higher pay. But other women would lose—those nurses who become unemployed, as well as other workers who are affected by the cutback.

If the employer were a state government, the scenario might progress differently. The public sector does not face the rigors of competition to the same extent as do private firms. Perhaps this explains why public sector employees seem to stand at the forefront of the comparable worth movement. The public sector could not force employees to work for them if the comparable worth remedy recommended lowering the wages in high-paying "male jobs." But employee groups promoting comparable worth rarely request such a policy. The government can pay the bill for the cost of upgrading wages in female-dominated occupations by raising taxes. This is the solution proposed by comparable worth supporters. Still, in the long run, the state may have financing problems since taxpayers may not agree to foot the bill; in that case a scenario similar to that of the private firm—the unemployment of government workers as government curtails services, particularly the unemployment of women in predominantly female occupations—would result.

Concluding Remarks

Advocates of comparable worth see it as a way of raising women's economic status and, predictably, tend to minimize costs. A typical comment follows (Center for Philosophy and Public Policy):

> Certainly, the costs incurred would vary widely depending on the scope of the approach chosen. But the economic costs of remedying overt discrimination should not prove staggering. Employers and business interests have a long history of protesting that fair treatment of workers will result in massive economic disruption. Similar claims were made preceding the abolishment of child labor and the establishment of the minimum wage, and none of the dire predictions came to pass.

Evidently the author does not know of the numerous economic studies showing the disemployment effects of the minimum wage. More importantly, this statement shows a failure to see that comparable worth would have further-reaching effects than the child labor law or the minimum wage laws that have actually been implemented. Comparable worth is a far more radical theory than the others. Implementing comparable worth through studies such as the one conducted in Washington state compares to instituting a $15.00 an hour minimum wage or passing sweeping legislation such as Prohibition. Moreover, the costs in terms of economic distortions would be profound, even relative to the dollars required to pay bills. Curiously, one comparable worth proponent[9] recognizes this and suggests "that we give very serious consideration to the idea that firms who raise pay for 'disadvantaged occupations' get special tax incentives for capital equipment that will raise the productivity of these workers. We can't expect firms to swallow these losses; that's crazy." Barrett goes to these lengths because she thinks comparable worth might raise the incomes of poor women heading families on welfare. But long-term welfare recipients do not hold the jobs covered by comparable worth schemes. The level of work participation of women in this situation is very low. Furthermore, studies of minimum wage effects show that those most vulnerable to disemployment as a result of wage hikes which exceed national market rates are the disadvantaged—those with little education, poor training, and little work experience. Comparable worth would hurt, not help, these women. Subsidies to try to prevent these effects from occurring would be impractical to implement and prohibitively costly.

With all the difficulties that would ensue from implementing comparable worth it is striking that it would not achieve many of the original goals of the women's movement such as the representation of women as electricians, physicists, managers, or plumbers. In fact, it would probably retard the substantial progress that has been made in the past decade. Younger women have dramatically shifted their school training and occupational choices. One motivation behind their undertaking additional training and schooling is the higher pay they can obtain from the investment, making it worthwhile. Raising the pay of clerical jobs, teaching and nursing above the market rates would lessen incentive to prepare for other occupations and simply lead to an oversupply in women's fields, creating additional market instability and aggravating the problem of occupational segregation.

In addition, comparable worth diverts attention from the real problems of discrimination. Such problems need not be confined to women in traditional jobs. Pay differences between men and women performing the same job in the same firm at the same level of seniority may no longer be a prevalent form of discrimination. The form discrimination is more likely to take is denial of entry to women into on-the-job training or promotions on the same basis as men. The obvious solution is the direct one: allowing and encouraging women whose rights are denied to bring suit. Existing laws were intended to address exactly these forms of discrimination.

---

[9] Barrett, Nancy (1984). "Poverty, Welfare and Comparable Worth." in Phyllis Schlafly ed., *Equal Pay For Unequal Work, A Conference on Comparable Worth.*

Remedies other than comparable worth would be more direct and effective in, among other areas, government's pay setting procedures. Governments usually do not have the flexibility to meet market demands. The need to adhere to rigid rules under considerable political pressure may result in paying wages that are too high (an ample supply of workers could be obtained at a lower wage) in some occupations, and too low in others. For example, if the private plants covered in a pay survey for a particular occupation were themselves paying above market, perhaps as the result of some powerful union, the adopted wage scale would be based on a distorted standard.[10] Such a situation could lead to unnecessary pay differentials between certain occupations that are male-dominated (which are more likely to be represented by such strong unions) and other male, mixed, and female occupations, whose private sector wages are more competitive. Comparable worth cannot solve the problem, however, since it does not address it. Pay setting procedures can be improved by altering pay surveys and by introducing market criteria, for example, by considering the length of the queue to enter different government jobs and the length of time vacancies remain open. Such changes could help women and improve the efficiency of government as well.

Dramatic progress has occurred in women's college enrollment, in labor force participation, and in entrance into formerly male occupations, particularly in the professions. Fundamental changes in women's role in the family and the economy reflecting changing social attitudes and rising wage rates, have fueled these changes. Pay set according to comparable worth would distort wage signals, inducing inappropriate supply responses and unemployment. If women have been discouraged by society or barred by employers from entering certain occupations, the appropriate response is to remove the barriers. In sum, a policy of comparable worth would be impractical if not impossible, to implement, would disrupt the functioning of the economy, and would ultimately fail to serve the best interests of women. Comparable worth is no shortcut to equality.

---

[10] If union power was based in union monopoly and forced brickmasons' wages artificially high it would cause market instability. More workers would desire to become brickmasons than firms would hire at the artifically high wage. It is unlikely that comparable worth would improve such a situation. A comparable worth solution would probably require higher pay for clergy than for brickmasons since education is a readily measured item assigned substantial weight in job evaluation studies. An artificially high wage for the clergy would also result in market instability. Only the removal of or restrictions on monopoly union power could satisfactorily resolve the issue.

A LABOR PERSPECTIVE

COMPARABLE WORTH AND THE ROLE OF COLLECTIVE BARGAINING

JESSE M. CALHOON
President
Marine Engineers Beneficial Association
AFL-CIO

Comparable worth, or "pay equity" as careful wordsmiths are calling it these days, is a concept that sounds good, but would in practice have disastrous consequences for the working men and women of this country. The advocates of comparable worth would, in effect, take wage bargaining out of labor's hands and turn it over to the courts and the federal bureaucracy—the "progressive elite" who seem to believe they know what's best for us.

This policy has little or nothing to do with true pay equity. But such clever semantic tactics have worked before; the term "pay equity" is a stroke of genius! How many members of Congress can be counted on to oppose "fairness" in pay? Very few, I'm afraid, unless they look beyond semantics and come to realize that this policy stands for anything but fairness in pay. This is interest group politics pure and simple and congressional comparable worth advocates are playing a precarious balancing game between labor and a small group of feminists.

Let's start from the beginning. Comparable worth asserts that women were forced into a small number of jobs and then wages for these jobs were artificially lowered simply because women held these jobs. A new grand conspiracy theory. The problem is, for those who deal with management on behalf of labor on a regular basis, this theory makes no sense. It assumes that management is indifferent on the matter of profits and anxious to overpay male workers. Personally, I have never met such generous employers. If, as Geraldine Ferraro claims, women get paid 59 percent of what men get paid for the *same* work, hiring women in place of men would do absolute wonders for profits. Labor's share of national income is 70 percent. On average then, 70 percent of an employer's costs go toward workers' wages; if an employer had hired only men and suddenly switched to hiring only women, he would reduce his total costs by nearly 30 percent! Which employer could resist such mammoth additions to their profits? Perhaps there are some employers dead-set against hiring women, but no matter—these would quickly be filing for bankruptcy. This conspiracy theory, then strikes me as sheer nonsense. Some employers may *want* to discriminate and a few may indeed do just that, but as a general rule the cost of them doing so would put them at such a competitive disadvantage as to make gross discrimination impossible.

There must, then, be other reasons for the lower pay of women. And so there are: different levels of experience, seniority, education, training and expectations; different occupational preferences; traditional family roles and societal values. These factors are changing, however, and along with these changes occupational "crowding" and the female-male earnings gap are changing as well. More men and women are moving into mixed occupations, out of heavily male-dominated or female-dominated jobs. That's why the hourly gap has been decreasing steadily over the past few years and is now up to 66%. These major changes will be stopped dead in their tracks by comparable worth. Comparable worth is not the way to go—it will backfire, slowing women's entry into new occupations and throwing many women out of work and on to welfare rolls.

Leaving aside these objections for a moment, we should consider the mushy base on which determinations of comparable worth rely. Comparable worth is implemented through use of job evaluation systems which compare the "true worth" of jobs. These systems bear little relation to market wages; such wages are tainted by discriminatory tendencies and so must be ignored. An arbitrary system is set up which agrees with somebody's definition of worth. The idea that such a system could be objective is ludicrous at best. Any job evaluation system is highly subjective; worse yet, these systems are incredibly easy to manipulate. Evaluators can "find" any results they want to find or are instructed to find. For example, physical effort is far more often an important factor in male jobs than in female jobs. But comparable worth people know how to deal with this. Their "solution" is to measure the "average" amount of weight lifted each day. In this way, the physical effort of a worker carrying 100 pound load several times a day would be considered equal to the physical effort of a secretary who did light lifting (of, for example, a stapler) continually throughout the day. Another job evaluation technique with similar results involves measuring worth effort (note: *not* output) through the amount of calories expended in accomplishing job tasks. Consequently, a typist in a hot office expending more calories typing letters than a metal worker in an air-conditioned factory would be valued more highly under this technique and would thus be paid more. We would be measuring "grunts and groans" and not actual work completed. The crucial point here is that it's easy to bias job evaluation to get the desired bottom-line results.

Basically, if a comparable worth advocate gets hold of the system, you can expect to see large pay increases for female-dominated jobs and large decreases for male-dominated jobs. Any doubting Thomases should look at how comparable worth has been implemented in the states of Washington and Minnesota. By virtually ignoring factors which are of prime importance in blue collar work such as physical effort and work environment, blue collar workers were "found" to be "highly overpaid" in relation to their evaluated "worth." Typical examples of jobs rated as comparable under these systems are: secretaries and electricians; clerk-typists and highway workers; telephone operators and security workers. In the Washington State study, of five categories of workers (Office Support Services, Technical, Trades and Maintenance, Professional, and Institutional Support), Trades and Maintenance workers were determined to be the most "overpaid" relative to their value under the new comparable worth system. It now appears that the federal government may authorize such a study for its employees.

A House-Senate conference will likely be set up to consider a Federal sector comparable worth bill, H.R. 5680. The legislation was recently passed overwhelmingly by our Representatives in the House who were running scared after seeing those magic words "pay equity" plastered on the front page of the bill. The backers of this seemingly "innocent" bill are making a habit of playing dumb when confronted with the notion that this legislation will nullify any gains achieved by Federal blue collar workers through collective bargaining. H.R. 5680 mandates that a pay equity study be conducted and a comparable worth system be imposed on the Federal government. This bill poses clear dangers for blue collar workers and their unions.

To begin with, the classification system used to grade blue collar employees would be thrown out the window. In its place would be a classification system resembling that used for Federal white collar workers. This system places almost no value on factors which are of prime importance in blue collar work: physical demands and work environment. As a result, as with the comparable worth systems in Minnesota and Washington, blue collar jobs would all appear to be "overpaid."

Quite possibly, to satisfy comparable worth junkies, the Federal government would be pressured into going beyond its present white collar evaluation system to make blue collar workers appear still more "overpaid." As mentioned earlier, job evaluation studies, because they rest solely on the subjective judgment of the researchers, are easily manipulated. A system designed with sex criteria specifically in mind is easily developed; possible methods were mentioned earlier. While the bill does not specify that the white collar and blue collar classification system would have to be combined, a comparable worth system would demand it. Basically the idea behind comparable worth is that different jobs within an organization can be compared and "objectively" valued relative to each other. It makes no sense to say that you can use two perfect, "objective" systems, operating side-by-side, especially since each of these systems would place lower values on the jobs covered by the other system. If, as comparable worth advocates maintain, you can create a "bias-free" system where blue collar workers are "overpaid", it would have to be a universal system.

Such a universal system used by the Federal government is bound to strongly resemble the current white collar job evaluation system. This system provides a uniform standard with which *all* jobs can be ranked. And this uniform standard uses a weighting system that allows the factors of physical demands and work environment to account for *one* percentage point each. The Federal government's blue collar system, on the other hand, is based on local prevailing wages, and provides no such bias against blue collar work.

Once the white collar classification system is adopted across-the-board, blue collar pay will be lowered both in the short term and long term. While legislation contains a provision to prohibit downgrading as a result of the comparable worth study, there are other provisions already in law which require reclassification of "overpaid" positions. Positions found to be "overpaid" by a comparable worth study will not be allowed to remain "misclassified." Not only will blue collar positions be downgraded, but they will no longer receive their deserved full pay comparability increases. As we have seen Presidents and Congress always give pay increases to Federal white collar employees which are far below full comparability levels. Worse still, we can expect the normally low level of these comparability increases to be cut still further as some of these funds are diverted to give "bonus" increases to women who are allegedly "underpaid."

Those promoting this idea claim that no one's wages would be cut. But there is no such thing as a free lunch. Where is government going to get the money to pay for increasing the wages of 1 million female Federal workers by 20 to 30 percent? We've got to be realistic about this—even with all the promises blue collar workers can look forward to seeing their pay frozen for the foreseeable future. Paying the bills and supporting a family while your real income is cut year after year is not something to look forward to.

What this all boils down to is that collective bargaining in the Federal sector will soon cease to have any meaning. Once comparable worth policies are implemented, and Federal employees are all covered under a so-called "objective" system, there will be no room for negotiation over salaries. One way, and only one way, will be the "right" way to compensate employees. We will be substituting the opinion of "expert" evaluators for the hard-won victories of collective bargaining.

More disquieting still is the clear intent of comparable worth advocates to use this legislation as a stepping stone to more comprehensive, economy-wide comparable worth policies. One should take note of statements like that of AFSCME President Gerald W. McEntree regarding the Washington State case:". . . the stage will also be set for the long-overdue reform of this nation's private sector, and that's an even bigger proposition. In short, the stage is being set for a revolutionary change in the way this society treats women workers." If that "revolutionary" change looks anything like Washington State's "revolutionary" change, blue collar workers across the nation can look forward to substantially lower pay checks.

And it looks like we won't have long to wait. Hearings on yet another comparable worth bill, H.R. 5092, were held in Los Angeles during the

Democratic Convention. This bill is a private sector comparable worth bill. The Equal Employment Opportunity Commission is ordered to conduct an all-out effort to make comparable worth a reality across the nation. The EEOC will be in the business of telling firms what to pay to which employees.

Before we know it, we'll have a full-fledged wage control board, run by those ever-helpful, all-knowing bureaucrats. These bills will turn out to be highly effective anti-labor legislation. The final result will be that all working people, men and women, will end up worse off. There must be a better way.

AN INDEPENDENT BUSINESS PERSPECTIVE

THE PRACTICAL CONSEQUENCES OF COMPARABLE WORTH FOR SMALL BUSINESS

JOHN SLOAN, JR.
President
National Federation of Independent Business

Proponents of comparable worth point accusingly to the 40 percent "pay gap" between men and women as conclusive evidence of rampant, institutionalized sexual discrimination. But, is it? To date, the courts—with only one major exception (*A.F.S.C.M.E. v. State of Washington*)—have answered: "No." "That payments are different is insufficient alone to establish a prima facie case," according to the U.S. Court of Appeals for the Ninth Circuit in its July 3, 1984, decision—the most recent in this volatile area.

Granted, one could easily argue that, if sex-discrimination is an institutional evil, then—Justice O'Connor to the contrary—one could not look to the rock-ribbed institution of this nation's courts for relief. However, a dispassionate examination of the "pay gap" and its roots would appear to indicate that, in this matter at least, the judges' rulings against comparable worth arguments have been in keeping not only with legal niceties but with "real facts" as well.

In holding up the "pay gap" as proof positive of egregious sexual discrimination, comparable worth proponents identify the cause of this apparent inequality as that ever-popular and ever-villainous creature: Society. In their view, this amorphous but decidedly sexist criminal has, with malice aforethought, designated certain jobs as being "fit for women," placed artificially low values on those jobs, and then steered women away from better careers and into the ghetto of low-paying, dead-end slots created for them.

Doubtless sex-discrimination runs deep in this country and elsewhere. And certainly many women are underpaid and otherwise held back in career advancement for no "reason" other than that they are female. But the scenario described in the preceding paragraph ignores many equally undeniable facts of the job market. As a result, that capsule history of "Pay Discrimination in America," wrought by a wicked conspiracy of employers known only as S.O.C.I.E.T.Y., emerges as little more than a paranoid fantasy.

In fact, however, the pay gap between male and female workers can be explained largely in terms of differences in education, in occupational experience and in seniority. The massive influx of women into the job market in recent years has tended to magnify the effect of these three factors by depressing the wages of women as a group. (Regardless of their sex, new workers typically earn less because of their relative lack of experience and skills.) To a degree, self-selection of jobs also is a likely contributory factor to "the gap." Women—and men—need not be forced at gun-point into lower paying jobs. Coal mining is not everybody's cup of tea. In many cases, people willingly opt for jobs that carry a lower marketplace value because they offer clean, indoor work that is neither dangerous nor physically tasking.

It is precisely these realities which cause many a small-business owner to shudder at the very mention of comparable worth. Small firms typically have served both men and women as their first employer. It is the small firms which historically have hired the undereducated, the unskilled and the inexperienced from the labor pool and given them the experience and skills which make them attractive to big business and open up the possibility of rewarding careers.

Leaving aside the question of the extent to which sexism is responsible for the pay gap, let's examine the likely practical effect of comparable worth legislation on small business.

Who is to determine what is a fair wage? And, equally problematic, how is this determination to be made? Positions labeled as "entry level" by big business often pose requirements (written or unwritten) far greater than those observed by small business. Small firms, for example, often will take on file clerks and teach them how to file, while introducing them to such mundane things as proper business decorum and basic protocols. Without this undocumented training, these workers would never make it past the job interview at larger companies.

Yet, any scheme to define or quantify comparable worth would, in practice, require small-business employers to pay their beginning clerks the same wages as those provided by big business to their not-nearly-so-green entry-level clerks. The up-shot of such "comparability" would be similar to that produced by boosts in the minimum wage: low-skill job opportunities would be destroyed as these marginal positions lose their already tenuous cost-effectiveness. Those needing first jobs to garner the basic experience and skills necessary to launch rewarding careers will find fewer and fewer small-business doors open as more and more low-skill jobs are exported abroad.

The practical fact of the matter is that small-business owners pay wages according to what they think a job is worth to their individual companies, not what some distant power-that-be says a job should be worth. Sure, this is a subjective judgment. But it is a highly informed judgment.

It is informed because small-business owners know that their business and their employees better than anyone else. This knowledge is a direct result of the size of small business. Expansively defined, *employing* small business averages only about 13 workers per firm. (The median number of workers is far less.) Because of this "intimacy," small-business owners can personally keep tabs on each employee's productivity and cost and weigh those considerations against both the company's balance sheet and the local "going rate" for each kind of job.

To appreciate the practical difficulties inherent in imposing a comparable worth wage scheme onto a typical small business operation, it may be useful to walk through the process small-business owners would probably be forced to undertake.

To follow the spirit of "comparable worth"—as well as protect themselves from the possibility of a law suit—small-business owners would first have to conduct a formal evaluation of qualifications for all positions and compile a list, by sex, of all people who have held that job or one like it. In theory, the evaluation could be done "in-house" or by a consultant. But, since the typical small-business owner has little, if any, formal personnel management training (a fact which presumably would be pertinent in a "comparable worth" suit), the prudent owner would probably engage a consulting firm to help.

This step represents a fixed cost to the small employer. However, accompanying that fixed cost is the likelihood he cannot, at least initially, even find a firm willing to take on such a relatively small job. "Comparable worth" would place a huge demand on those who, theoretically, are qualified to provide such services. Larger firms would provide a more lucrative market. Thus, engaging a consultant would be problematic on the score of availability as well as cost.

Let's assume, however, a consultant can be and is engaged. Having evaluated all positions, the consultant would then have to establish a worth or value for each. Values could be pegged in one of two ways. The consultant could employ "rules of thumb" developed from surveys of larger firms. Or, the consultant could make an assessment of the individual small business. In all probability the former would be unacceptable. Surveys of larger firms' wage and benefit packages are usually irrelevant to small businesses. Moreover, the individuality of each small firm defies the standardization implicit in "rules of thumb." The alternative—individual tailoring—is more costly to conduct and yields a more arbitrary (though not necessarily more unfair) result.

The dilemma of initially implementing "comparable worth," therefore, can be boiled down to a series of no-win decisions for the small employer. No matter who conducts the job evaluations or what method is used to calculate value, the small-business owner loses. But even if few adverse consequences arise from that process, initial implementation eventually gives way to daily operation.

If anything, daily operation under "comparable worth" is even more difficult than initiating the scheme. Daily operation involves myriad decisions. Some affect personnel; many don't. But any decision affecting personnel would give rise to questions over the meaning of "comparable worth." And the answers given will strongly influence the cost of business operations.

Initially, at least, the owner knows "comparable worth" is something that must be effectuated by all competitors. -

Small-business owners will probably be placed at a competitive disadvantage vis a vis their larger counterparts as a result of this. (It is a given that virtually any regulation puts a disproportionate burden of its cost on the back of small business. To date, no one has come forth with a regulatory flexibility plan for comparable worth to suggest how to ease the pain within the small-business community.)

However, all competitors absorb fixed costs. But it is in the daily operation and the success in accepting and avoiding the consequences of risk where small-business owners can find any kind of competitive advantage. The risk I refer to here is not investment and market behavior. It is the risk that interpretation of the law will provide compliance at the lowest possible cost.

A short example should be illustrative. Suppose the XYZ trucking company has three employees, a female secretary and two male drivers. An initial comparable worth evaluation advises the owner that the secretary and driver occupations are of equal value; the owner adjusts his wage scale accordingly. But Jane Doe proves not to be very effective as a secretary while John Doe and Joe Jones produce very well as drivers. The year ends, and raises are considered. XYZ's owner wants to reward the two drivers with raises, but he doesn't feel the secretary has earned one. What does the owner do?

The obvious answer is that the employer gives the males raises without increasing the female's pay (assuming the case could be documented, of course). But when does such an apparently simple decision become a pattern? And when does the pattern subject the owner to suit?

Take XYZ trucking once more. The owner needs to add another driver. Since we have at the outset arbitrarily repealed the law of supply and demand, our example owner faces no real world problem of having to pay higher wages to attract another driver or hold the two he already has. So, the owner hires a third driver at a wage comparable to the secretary and at raise time, the same thing happens. The drivers get a raise, but the secretary doesn't. Has a pattern now been established? Is the employer now liable?

Small-business owners can't go running to a consulting firm every time a personnel decision has to be made. To do so would impose non-competitive costs. Additionally, there is no assurance that the advice given by personnel experts would be good advice—either economically or legally. A 1981 study of job evaluation technologies by the National Academy of Sciences concluded that the value or worth of jobs cannot be determined by scientific methods. The whole issue of comparable worth is one in which the desire for fairness has far outpaced the technology whereby fairness might be determined. In the end, "worth" always boils down to a subjective judgment of value.

In effect, we return to the beginning. Small-business owners remain on their own to interpret (and be held accountable for their interpretation of) what constitutes a fair wage. But there is an incredibly significant responsibility that would be added by comparable worth legislation. They would have to interpret (actually, guess) whether their wage structure—derived from evaluations of the market place and personnel performance, as in the past, or from standardized "rules of thumb" (none of which are absolutely applicable and of doubtful legal status), or however—will stand the dicey test of judicial second-guessing.

That legislation places extraordinarily different responsibilities upon those who must implement it may not be sufficient grounds to negate a policy initiative. However, if a new policy cannot be administered without an extraordinary degree of uncertainty, inequity and plain economic foolishness, then we have quite another matter. "Comparable worth" is another matter.

A CORPORATE PERSPECTIVE

COMPARABLE WORTH: UNCHARTED & TREACHEROUS WATERS

SAMUEL R. MITCHELL
President
Chicago Association of Commerce and Industry

Introduction

The Chicago Association of Commerce and Industry (CACI) is the principal representative of the Chicago area business community. CACI has long been an advocate of equal employment opportunity and affirmative action, but it has significant reservations about proposed comparable worth legislation. CACI believes that more analysis must be done before such legislation is implemented in Illinois or at the national level, and that the present proposals are little more than an invitation to potentially ruinous litigation against states, the federal government and the business community.

To date, just a few jurisdictions have adopted the comparable worth theory either by legislation or case law. The Supreme Court's *Washington v. Gunther*[1] decision specifically stated that it did not embrace the theory. Similarly, *AFSCME v. Washington*[2] was predicated on the State of Washington's failure to remedy discrimination in pay which had been found by its own studies. The imposition of liability for unequal pay for jobs deemed to have "comparable worth" would be imposed on an employer without need of a showing of sex discrimination by the employer. Those cases which have presented comparable worth issues to the courts have been rejected.

Before passing legislation on comparable worth and before the State spends funds to analyze its jobs, the proponents of the comparable worth theory should come forward with far more evidence demonstrating that there is truly a need for such legislation; that legislation will actually remedy the perceived problems; and what the impact of such legislation will be. Other steps, such as monitoring the actions of other states and the federal government in this area, monitoring the number and types of complaints filed with state and federal courts and agencies on pay issues, and consideration of comments filed with the Human Rights Commission on the issue also can be undertaken. Because so much protection already is provided by existing laws on discrimination, there is no emergency requiring immediate action.

---

[1] 452 U.S. 161 (1981)

[2] 578 F. Supp. 846 (W.D. Wash. 1983)

Constitutional Protections

Illinois law currently affords substantial protections against discrimination in wages and other employment decisions to working women. This protection is contained in the Constitution itself. Section 17 of Article I of the 1970 Constitution provides that:

> All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practices of any employer . . .

Section 17 further provides that: "These rights are enforceable without any action by the General Assembly. . ." This means, therefore, that the Constitutional protection against sex discrimination in employment is directly enforceable by any aggrieved individual.

Section 18 of Article I of the Constitution states that:

> Equal protection of the law shall not be denied or abridged on account of sex by the State or its units of local government and school districts.

This provision provides protection against discriminatory practices by state and local governments or school districts which are substantial employers of women.

Statuatory Protections

Illinois also has a new Human Rights Act which became effective on July 1, 1980.[3] That Act prohibits discrimination on the basis of sex in employment by employers, employment agencies and labor organizations. Any Illinois employer with 15 or more employees is covered. The Act includes discrimination with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment. This Act succeeds the Illinois Fair Employment Practices Act, which had similar proscriptions against sex discrimination in employment. The Illinois Human Rights Department is empowered to accept and investigate charges of discrimination and to initiate complaints in cases where substantial evidence to support the charge is found. The Illinois Human Rights Commission is empowered to hold hearings and to issue judicially enforceable decisions.

Moreover, Illinois has specific legislation aimed at unequal pay. There is a provision in the Illinois Minimum Wage Law which provides as follows:

> No employer shall discriminate between employees on the basis of sex by paying wages to employees at a rate less than the rate at which he pays wages to employees

---

[3] Ill. Rev. Stat. ch. 68, S 8-101, *et seq.*

> of the opposite sex for the same or substantially similar work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) a differential based on any other factor other than sex.[4]

Most women workers are also protected by federal non-discrimination in employment legislation. Primary among these protections is Title VII of the Civil Rights Act of 1964 which, like the Illinois Human Rights Act, covers employers with 15 or more employees. Similarly, Title VII precludes discrimination in all phases of employment on the basis of sex.[5] As in the case of the Illinois Minimum Wage law, the federal Equal Pay Act of 1963 prohibits employers from paying unequal wages to the sexes. In addition to these two basic statutes, there are other federal rules and regulations which would apply to female workers in specific fields such as, for example, Title IX of the Education Amendments of 1972, which precludes discrimination on the basis of sex in federally assisted educational programs. Not long ago, the Supreme Court affirmed that this provision also covers the employment opportunities of women in these programs.[6]

Pursuant to the former Illinois Fair Employment Practices Act, guidelines were issued on the subject of discrimination in compensation. These guidelines have been adopted by the Human Rights Commission and are currently in effect. Section 2.6 of the guidelines states as follows:

> It is considered a violation of the Act for an employer or a labor organization to differentiate between men and women performing the same or substantially similar work in fixing the wages, benefits and other compensation to be made to such employees.

Last year, the Illinois Human Rights Commission and the Illinois Human Rights Department jointly proposed interpretative rules on sex discrimination in employment. These rules readopted the FEPC's prohibition against discrimination in compensation, but stopped short of addressing the issue of comparable worth. Instead, the Commission solicited specific written and oral comments on the concept of comparable worth affecting earnings disparities between males and females and on the advisability of issuing interpretative rules in that subject. In this process, hearings were held before the Department and the Commission in the Spring of 1983. Final interpretative rules have yet to be adopted and no formal interpretations concerning comparable worth have been proposed.

Present Legal Status of the Comparable Worth Theory

Although the Supreme Court's decision on *County of Washington v.*

---

[4] Ill. Rev. Stat. ch. 48, S1004(b).

[5] 42 U.S.C. S 200e-2(a) (1).

[6] *See North Haven Board of Education v. Bell*, 456 U.S. 512 (1982).

Gunther[7] decided under Title VII, was widely touted as a comparable worth case, in reality it was not. Indeed, the Supreme Court took pains to point out the limitations of its holding:

> We emphasize at the outset the narrowness of the question before us in this case. Respondents' claim is not based on a controversial concept of "comparable worth," under which plaintiffs might claim increased compensation on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community. Rather, respondents seek to prove, by direct evidence, that their wages were depressed because of intentional sex discrimination, consisting of setting the wage scale for female guards, but not for male guards, at a level lower than its own survey warranted.

The Court did not hold, however, that compensation claims under Title VII are not limited to cases where identical jobs are being compared. Other types of sex discrimination in compensation can be attacked where intentional discrimination is proved.

Similarly, although the proponents of the comparable worth concept claim to have prevailed in the State of Washington, the recent case of *American Federation of State, County and Municipal Employees (AFSCME) v. State of Washington,*[8] was not a comparable worth case either. Rather, as the court itself recognized, it was remarkably analogous to the Gunther case. There, the State has conducted a series of studies designed to assess whether employees on female-dominated jobs which required equivalent composites of skill, effort, responsibility and working conditions were being paid appropriate salaries as compared to persons in male-dominated occupations. Although the studies did not include a number of factors which might have explained the salary difference between male and female dominated position, the court did not attempt to evaluate the validity of the conclusions reached. Instead, the court focused on the State's failure to act on the conclusions of its own studies:

> After careful review of the record herein, this court cannot reach any conclusion other than the State of Washington has, and is continuing to maintain, a compensation system which discriminates on the basis of sex. The State of Washington has failed to rectify an acknowledged discriminatory disparity in compensation. The State has, and is continuing, to treat (SIC) some employees less favorably than others because of their sex, and this treatment is intentional.

The AFSCME case was decided under Title VII and, therefore, it is possible that the Washington court's interpretations of Title VII could be adopted in Illinois without further legislative action if a court were to be presented with evidence of intentional sex discrimination in compensation.

To the extent that true comparable worth lawsuits have been brought in the courts, the concept has been almost uniformly rejected. Essentially, these courts held that the comparison of dissimilar jobs was an impossible task that involved a massive intrusion of government and its legal system into the marketplace.[9]

---

[7] Note 1, *supra*.

[8] Note 2, *supra*

Further, many jobs traditionally have had low wages, without regard to the skill, effort or responsibility of the position, but not all such jobs have been held primarily by women. Higher education, the ministry, janitorial and busboy positions, all come to mind as low-paying positions with predominantly male incumbants. Likewise, high-wage positions, such as entertainment positions, have no necessary relation to the skill, effort or responsibility of the position and are not held primarily by men.

The theory of comparable worth also purports to offer a remedy for sex discrimination, but does not require a showing of intentional sex discrimination by the employer held liable to pay for the remedy. The concept of placing the cost and burden of remedying the perceived pay inequity in sex-segregated jobs on current employers, although the theory rests in historical events, societal attitudes and job market conditions rather than upon unlawful acts of the employer, is unjust.

Implications of Adopting a Comparable Worth System

The implementation of a comparable worth system is fraught with numerous theoretical and practical problems which raise questions that have not been answered to date:

—What standards will be set for measuring the intrinsic worth of a job to society or to employers?

—Why should a court or agency hack have any better idea of what a job is worth than a high school or college graduate choosing a career?

—If a nationally recognized Big 10 football coach can command more than $100,000 per year, should the female field hockey squad leader draw the same dollar?

—How many billions of dollars will have to be spent to rejustify every employer's wage structure to meet the new "comparable worth" standard?

—If legislation or regulations require employers to equalize wages upward to meet comparable worth goals, won't that flatten wages in other salary ranges for years to come?

—Is it appropriate or even possible to compare the intrinsic worth of blue-collar versus white-collar jobs?

---

[9] *E.g., Lemons v. City and County of Denver*, 620 F.2d 228 (10th Cir.), *cert denied*, 449 U.S. 888 (1980); *Power v. Barry County*, 539 F. Supp. 721 (W.D. Mich. 1982); *Wetzel v. Liberty Mutual Ins. Co.*, 449 F. Supp. 397 (W.D. Pa. 1978).

—If an employer does undergo a costly, inherently subjective job evaluation process, is it fair to hold him liable for damages should the government and/or courts disagree with the method of valuing the worth of the jobs?

—Is it fair to impose a remedy for a historical and societal situation on an employer without requiring a showing of intentional discrimination?

—Is it desirable to replace a market system for setting wage rates based in part on supply and demand by a subjective job evaluation system?

—If employers are forced to increase wage rates in numerous jobs to comply with comparable worth legislation, what impact will this increased cost have on our ability to compete in world markets?

Collective Bargaining

The "comparable worth" doctrine would interfere with the rights of employees to organize and bargain collectively over wages, benefits and other forms of compensation. A simple example illustrates the problem. Suppose that an employer with a large warehouse facility has a group of stock clerks, predominantly male, who are represented by the Teamsters or some other union. Suppose, also, that the warehouse file clerks, who are predominantly female, are not represented by a union. When the Teamsters negotiate with the employer over wages, the negotiating posture of the parties would be radically altered if the employer was subject to the comparable worth doctrine. The employer would be required to maintain a certain relationship between the wages of the unionized male stock clerks and the non-union unit of female file clerks, based on the relative intrinsic value of the jobs. Negotiations with the Teamsters or any other union would be burdened by considerations relating to the non-union stock clerks. Essentially, if the stock clerks' wages are raised, the file clerks' wages would also have to be raised. Thus, a host of non-bargaining unit issues would be brought to the bargaining table as a result of comparable worth. This "free rider" effect would substantially inhibit the ability of employees to freely organize and bargain collectively with their employers and would have a debilitating effect on organized labor.

Productivity is No Defense

Under comparable worth, employers would not be able to defend pay differentials on the basis of the operation of a bona fide seniority system, a merit pay system, or any system which would measure earnings by quantity or quality of production. This is the case because comparable worth *per se* looks at the intrinsic "objective" value of the job itself and not at the output of the individual. It is group- or position-oriented not production-oriented.

Ruinous, Costly and Useless Litigation

Finally, the definition of "comparable worth" is vague and will generate years of wasteful litigation in the courts. For example, under legislation proposed in the 1984 session of the Illinois General Assembly (H.B. 1646), "comparable worth" was defined as "the value of work as measured by the composite of the skill, effort, responsibility, and working conditions normally required in the performance of work." This definition does not advance our understanding of the proposed law. Webster's defines "composite" as "made up of distinct parts." Thus, the definition of "comparable worth" tells us that the "value of work" is measured by its distinct parts; *i.e.*, "skill, effort, responsibility, and working conditions." These terms, of course, have been transported from the Equal Pay Act, where they made sense. While it has been relatively easy for the courts to deal with comparing jobs of *equal* working conditions, this is not the task contemplated under H.B. 1646. Under H.B. 1646, jobs would be compared on the basis of some "composite" of those four criteria. Claims under this language would be invented by the fertile imagination of plaintiffs' lawyers. Employers, unions and the public would be whipsawed by competing claims from different employee groups, male or female-dominated, and the courts would be flooded with unending years of litigation seeking to resolve what was really intended by the General Assembly in adopting the "comparable worth" standard.

Cost

In sum, comparable worth is unnecessary, ill-conceived, premature, vague and unintelligible, and it will impose an enormous burden on employers, taxpayers and unions with currently productive collective bargaining relationships. One indication of the cost of this type of legislation is the federal court judgment handed down in December, 1983 against the State of Washington on an intentional sex-discrimination theory. Commentators have estimated that back pay in that case could amount to $500 million, while estimates for pay adjustments necessary to comply with the judge's notion of comparable worth may amount to another $5 million. In Illinois, a similar judgment would require a 1% increase in the individual State income tax, or $300.00 more on taxes for a family with an income of $30,000.00. Applied to private employers, no reliable estimates of costs exist, but they would be considerably larger.

Conclusion

In a recent decision, the 9th Circuit Court of Appeals warned that acceptance of the comparable worth theory "would plunge us into uncharted and treacherous areas."[10] The court is absolutely right. Not all statistical differences constitute discrimination. Given the enormous demonstrated costs of any application of the comparable worth doctrine in the public or private sector, proponents of this radical new theory should be held to a heavy burden of proof. Proponents should be required to satisfy this burden by hard, compelling evidence before governments or private businesses spend millions of dollars on studies to determine whether their salary practices duplicate some model of comparability. To date the proponents of comparable worth have made no case whatsoever for steaming full speed out of the familiar waters of equal pay for equal work and into those "uncharted and treacherous" areas of comparable worth.

---

[10] *Spaulding v. University of Washington*, ____ F.2d ____, BNA DLR No. 133 at D-9 (9th Cir., July 11, 1984).

Credits:

Credit for the analytical work necessary to develop the statement of the CACI view on comparable worth is given to the following member volunteers: Gerald Skoning, Partner, Seyfarth, Shaw, Fairweather, & Geraldson, & CACI Vice President for Merit Employment (Also editor for this comment); Edward B. Miller, Senior Labor Counsel, Pope, Ballard, Shepard, & Fowle, Ltd., & CACI Chairman Labor-Management Relations Committee; Brian Bulger, Pope, Ballard, Shepard, & Fowle, Ltd., Chairman, CACI Comparable Worth Analysis Committee; and the other members of the committee: Stephan H. Adelman, Keck, Mahin, & Cate; Patricia A. Brandin, Seyfarth, Shaw, Fairweather, & Geraldson; Michael G. Cleveland, Vedder, Price, Kaufman, & Kammholz; Carla J. Rozycki, Keck, Mahin, & Kate. Staff work & editing was conducted by William A. Price, CACI Staff General Counsel & Director, Governmental Affairs.

A PERSPECTIVE OF STATE GOVERNMENT

COMPARABLE WORTH—A FLAWED REMEDY

TYRONE C. FAHNER
Former Attorney General for
the State of Illinois

While the issue of comparable worth has been raised with respect to both the private and public sectors, it is the public sector which has been the primary focus of the activity to date. The public sector is more vulnerable to comparable worth challenges because government employment is a microcosm of almost all jobs in our society—from physicians and nurses, and teachers and clerical employees, to craft workers and unskilled employees. Rarely does a single private employer have such a variety of employees with different skills and job requirements.

The recently decision of *AFSCME* v. *State of Washington* has greatly increased the interest in the comparable worth issue. In that case, the court held that the State of Washington had violated Title VII of the Civil Rights Act by failing to pay male and female employees in accordance with a state-funded study which had concluded that female state employees were being paid less than their jobs were "worth" as compared to male state employees. This court decision and legislative activity in some states—such as laws requiring that studies similar to the one which formed the basis of the Washington decision be conducted—require serious consideration of the appropriateness of comparable worth as a theory and as a remedy for sex discrimination in state government.

While ending sex discrimination is obviously a very important goal in state government—as it is in the private sector—a comparable worth remedy is not the appropriate way to either end sex discrimination or to narrow the wage gap.

The most serious objection to a comparable worth remedy is that it would do nothing to accomplish the goal of desegregating the workforce and integrating women into the full panoply of jobs. In fact, it would do precisely the opposite. It would destroy the incentive of women to enter previously male-dominated fields. Thus, instead of women being locked into dead-end, low-paying jobs, they would be locked into dead-end, higher-paying jobs. A comparable worth remedy would simply raise the salaries of employees working in certain female-dominated positions—such as secretary—to equal that of employees working in certain male-dominated positions such as truck driver. The goal should not be to have a secretary paid the same as a truck driver, but to give the secretary the opportunity to become a truck driver, a security guard, a corporate president, or an engineer if that is where her interests and abilities truly lie.

There are other serious problems with the concept of comparable worth. First, it is based on the false assumption that the only explanation for the fact that women earn on the average less than 2/3 of the salaries men earn is sex discrimination and totally ignores the role that free choice plays in determining the types of jobs individuals are engaged in. That is, many women choose lower paying types of positions because of the advantages these positions afford them—such as flexible or shorter work hours, or little prior training required. In addition, on the average, men compared to women of the same age and educational achievement have greater total years of experience in the labor force and greater seniority on their current job. This is true both because many women interrupt their careers to raise families and because of the recent influx of large numbers of women into the labor force.

Second, comparable worth ignores the very market factors—supply and demand—which are the basis of our economy. An example from state government is appropriate. We may need to hire an individual with specific skills such as an environmental engineer. Often state capitals are some distance from the large metropolitan areas where there is a great supply of individuals with such skills. Thus, in order to hire an experienced environmental engineer from Chicago or Los Angeles to Springfield or Sacramento, we may have to pay the individual a salary higher than any particular job evaluation system would deem an environmental engineer is "worth." But if we need someone with these skills, we simply must pay a relatively high salary to retain the individual. This is simply a question of supply and demand, and it is an issue which comparable worth remedies choose to ignore.

A comparable worth system would require that employees in positions deemed comparable to the environmental engineer be paid the same as the environmental engineer regardless of the fact not one employee would receive above market compensation. Obviously, paying some state employees above market compensation would result in serious consequences for the state and the public: increased taxes, decreased employment or both.

Instead of the marketplace, comparable worth advocates seek to have wages set solely on the basis of job evaluation studies which compare different jobs according to several predetermined factors. For example, the state of Minnesota conducted a study of state jobs based upon four factors: know-how, problem-solving, accountability and working conditions. Different job evaluation systems use different factors or criteria and different weights in measuring jobs and there is no one system which is uniformly considered the best or most accurate system. This is because all job evaluation is necessarily subjective and necessarily relies upon value judgments. Common sense dictates that there is no absolute, scientific measurement of job worth. As the National Academy of Science stated in a report it did on job evaluations:

> The concept of intrinsic job worth — whether it exists, on what it should be based, whether there is a just wage — has been a matter of dispute for many centuries. We do not believe that the value—or worth — of jobs can be determined by scientific methods. Heirarchies of job worth are always, at least in part, a reflection of values.

Thus, the comparable worth advocates falsely assume that a fair and objective means of measuring every job exists.

Moreover, comparable worth advocates distort the purpose of job evaluation studies. The purpose of all job evaluation is to place appropriate salaries on the continuum of jobs which are present in an organization. The typical job evaluation will proceed in four steps:

1. A job analysis will be performed resulting in job descriptions of the jobs to be evaluated.
2. Compensable factors such as skill, effort, responsibility and working conditions will be chosen to represent what the organization wishes to reward.
3. The job descriptions are evaluated with respect to compensable factors.
4. A hierarchy of jobs is determined based on the summed values of compensable factors observed in the job description.

In theory this may sound like the perfect solution to comparable worth, but it is very deceiving since at every step of the way subjective value judgments must be made. Thus two people doing the same job evaluation — both acting fairly and in an unbiased way — could arrive at substantially different conclusions. For example, if the primary compensable factors are skill and undesirable working conditions, the result may differ sharply from those obtained by a method that emphasized degree of formal education and job experience. The determinations within each factor, like working conditions, is also subjective at best. For example, a task force study of state jobs in Illinois attributed the same number of points for adverse working conditions to a clerk and to a highway construction worker. And, even skill must be broken down into qualities such as interpretative, analytical or creative ability, judgment, leadership, interpersonal relations, etc. — each part must be assigned a weight as part of the whole "skill." In short, choosing the compensable factors and assigning them weight in the job evaluation is purely subjective.

And, most importantly, after jobs are ranked the salaries must be determined. All job evaluation systems must incorporate some mechanism to enable the employer to maintain desired relationships between its pay scales and market rates. One of the most common ways of doing this is to isolate what are called "key jobs." These are jobs that are found in various organizations. For such jobs a market exists and thus a market price for that job is determinable. Thus, it is the market which is driving force — it is the market which limits the subjectivity in the salary setting process. And, as discussed above, it is the market which the proponents of comparable worth desire to ignore.

Of further significance, using solely job evaluations also ignores the collective bargaining process. It has been accepted national policy to allow employees to organize and bargain collectively to exert economic leverage of their employees and thereby improve the economic position of the individual members. The State of Illinois has recently extended this national policy to all state employees. As a result, approximately 45,000 of the 65,000 state employees in Illinois are now represented by unions. It is important to let this process develop unencumbered by either legislatively or judicially determined "comparable worth" rates of pay. It seems far better for the parties affected to set wages through the negotiation process than to impose a highly subjective and imperfect system from the outside.

Finally, the huge cost of imposing a comparable worth remedy cannot be ignored. In the State of Washington, it is estimated that comparable worth for state employees will increase that state's annual salary cost by about a billion dollars. In Illinois, having 2 1/2 times more employees than Washington, the impact would be proportionately greater. In today's environment with the ever-increasing pressure on governments at all levels to reduce expenditures the impact nationwide of acceptance of the comparable worth theory could be staggering. One estimate is that bridging the gap in one year would cost $320 billion nationally and hike inflation an additional 10 points.

Certainly the inequity that "comparable worth" seeks to remedy is a real one. But there are alternatives which are far better than comparable worth to address this problem.

First, state employers ought to analyze their own pay systems—not to determine whether employees are paid equally under an arbitrary comparable worth standard—but to determine precisely how its employees' pay scales are set, and to ensure that the compensation system is fair and that employees are paid consistently according to the established system which gives proper consideration to the marketplace.

Secondly, state employers must ensure that absolutely no artificial barriers exist which prevent or inhibit women from seeking positions in fields which are traditionally male-dominated. For example, state employers should examine their transfer policies, where necessary revising them, to ensure both that employees are made aware of openings which exist at all levels and that no procedures are used which discourage employees from transferring to new departments or areas.

Finally, state employers should reexamine their affirmative action plans. These plans, if appropriately devised and vigorously followed internally, can be an effective means of attaining the goal of full integration of women into all areas of the workforce.

In sum, "comparable worth" is not a meaningful remedy for the obvious need that men and women in the work place be treated fairly. It would do absolutely nothing to desegregate the workforce and would likely have just the opposite effect. It totally ignores the role that free choice plays in determining the types of jobs that individuals are engaged in as well as supply and demand, the underpinnings of our economy. Rather than let the marketplace and sex discrimination laws, state and federal obviate current existing but diminishing inequities, comparable worth advocates seek to have wages set solely on the basis of job evaluation studies which compare different jobs according to several predetermined factors. Obviously the comparison is unavoidably subjective and therefore necessarily faulty. Finally, the cost of imposing comparable worth on state governments across the nation would be absolutely staggering, in the hundreds of billions of dollars. One need not be an economist to figure out that the money must come from somewhere, not least of all those persons that comparable worth is seeking to help. Its compound effect in taking from other needed state programs such as mental health, education, and welfare assistance, to name but a few, would be devastating. Existing and in-place mechanisms are solving the problem. We must not gamble peoples lives or the health of our economy with the obviously flawed and illogical theory of "comparable worth."

○